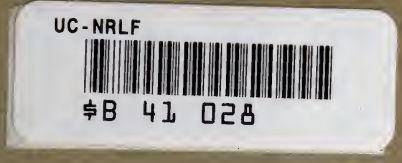

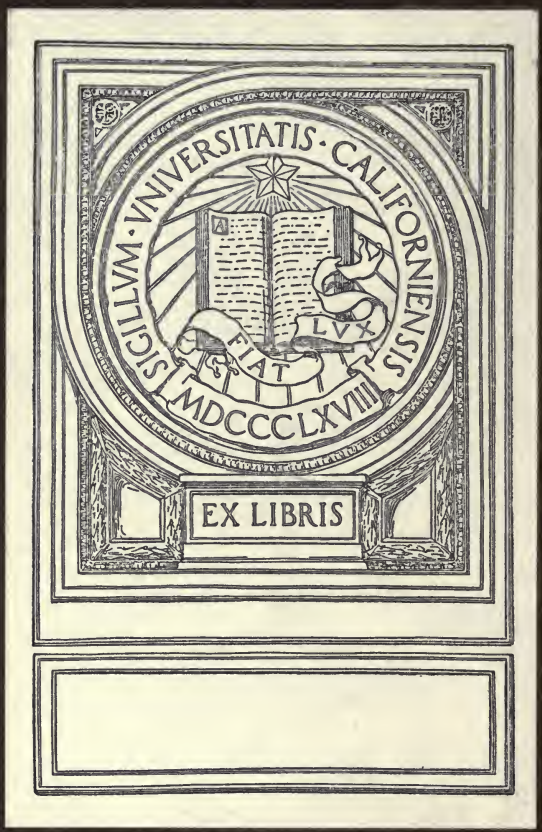
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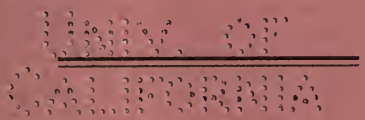
Is Manitoba Right?

A Question of Ethics, Politics
Facts and Law.

A Complete Historical and Controversial Review of the Manitoba School Question.



BY A. B. BETHUNE.

McIntyre Bros., Printers, Winnipeg.

PREFACE.

Up till the time at which the first portion of this review was published (about a year ago), no comprehensive or connected presentation of this important question from the Manitoba standpoint, had been made. The only statements of the case professing to be exhaustive, which had then appeared, were *ex parte* assertions and arguments made on behalf of the so-called "minority," and which, to the mind of the writer, appeared and still appear, inaccurate and misleading. It was with a view of controverting the contentions of the writers of the publications referred to, and of correcting any misapprehensions which might have been created by the inaccurate or distorted statements of fact which they contained, that the first part of this work was written. Since the time of its publication, much controversy has been waged on the subject of Manitoba's schools. The parliamentary discussion called forth by the effort of the Dominion Government to procure the enactment of remedial legislation, has disclosed the grounds and the arguments on which the government endeavors to justify its course on this question. These grounds are examined, and the arguments analyzed, in the second portion of this review. An effort has been made by the writer to give a full, lucid and connected statement of the question in controversy, while at the same time avoiding the citation of needless statistical matter or the quotation of irrelevant portions of legal or other documents. If the writer shall succeed in conveying a more accurate knowledge of the facts of the question, and a clearer apprehension of the nature and importance of the issues involved, he will feel amply repaid.

ALEX. B. BETHUNE.

Winnipeg, May 18, 1896.

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SECOND PART.

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In a state in which the form of government is autocratic, as in Russia at the present time, or aristocratic, as it was in England up till the beginning of the present century, the safety of the form of government does not demand a high average intelligence on the part of the masses. Indeed in such cases the existing form of government is more easily preserved, and the hold on power is much better secured to the autocrat or the ruling class by the existence of a low average of intelligence in the masses. In such states government is maintained and the laws of the country are framed largely with a view to protecting or increasing the privileges and power of the persons and classes who control the government.

The function of the masses in countries governed in this way is to supply by their toil the material resources from which all the power and splendors of the rulers must be drawn, and to furnish by their arms and their blood the military strength necessary to realize the schemes of conquest and aggrandizement which those rulers may conceive, or to defend these rulers in their privileges and possessions from the attacks of foreign and domestic assailants. In such conditions government exists primarily for the benefit of the rulers, and any advantages beyond the means of subsistence which may accrue to the governed are merely incidental. All history shows that religious creeds and dogmas have been a powerful instrument in the hands of rulers and privileged classes, in assisting them to maintain their domination. It has always been, and is at the present time, easy to persuade, by the manipulation of religious sanctions, men whose intellectual faculty is in a low state of development, that they have duties to the powers that be which cannot be neglected. It has been

equally easy to induce them to overlook the fact that they have rights which are always correlative and commensurate with those duties. Hence, in communities where the intelligence of the common people is low, we have always autocratic or aristocratic government, and almost as invariably we see the civil and political power of the rulers buttressed by, or identified with some ecclesiastical organization, usually in the form of a state church.

There have been forces of various kinds at work, which have produced a constant spread of intelligence amongst the masses, notwithstanding the hostility, more or less pronounced, of classes or individuals who have been accustomed to regard government, and its powers and privileges, as a hereditary right or perquisite. Simultaneously with the acquisition of knowledge by the masses, comes the demand on their part for a voice in the government. In these communities, where the people as a whole, are the most enlightened, the government is most democratic in form. Democracy is the inevitable outcome of enlightenment on the part of the people. It is a fact that no perfect democracy exists at present, or ever has existed. But this is simply because the highest degree of average intelligence which has ever been attained by any community has been very far short of what may be and will be attained. On the other hand there is hardly any nation in Christendom to-day, no matter how autocratic in form its government may be, in which the people have not some, and an increasing share in the control of public affairs. As democratic government presupposes a certain degree of intelligence on the part of the whole people, it is obvious that, in order to maintain or increase its success, careful provision must be made for the education of the people. This necessity is so self-evident that it has been recognized in practice by all the more enlightened and progressive peoples. Experience has shown that the safety of a democratic state demands that it shall take measures to insure to all its citizens at least the elements of a liberal education. This can be efficiently accomplished only by the establishment of a system of education under the direct supervision or control of the state. A little reflection will show the enormously increased efficiency in the education of a people which may be secured when the arrangements and regulations are made on a community-wide scale, and are embodied in the laws.

The necessity for the education of the people in self-governing communities has been admitted even by those who, it is to be suspected, on grounds of interest and inclination, would refuse to make the admission but for the fact that the soundness of the proposition is self-evident. Those individuals, or corporations, or classes, who enjoy exclusive privileges, and who desire that these shall be continued, can have no sincere desire for the education of the people, or for the development of the power of original thought, or the exercise of independent judgment by the mass. The modern movement in the direction of public education under the supervision of the state, has been opposed and obstructed by various interests and for various ostensible reasons. But in all countries in which state superintended education has been introduced, the obstruction and resistance which have been found to be the most strenuous and most formidable, have emanated from, and been inspired by, the ecclesias-

tics of certain religious denominations, and of these the Church of Rome has been, beyond all comparison, the most formidable, whether considered from the point of view of the uncompromising attitude it assumes, or from the solid homogeneousness of the body of citizens whose action it directs and controls. It is unnecessary here to rehearse the reasons why in a self-governing community, composed of heterogeneous elements, no relationship is possible between the state and any particular religious denomination. These reasons will suggest themselves. For the same reasons which render it impossible for a democratic state to recognize any particular church or denomination, it is impossible to permit of the teaching of any of the distinctive denominational dogmas or doctrines in the public schools.

But the Roman Catholic Church declares that any system of education, in which its distinctive dogmas are not taught, and in which its claims to recognition as the sole repository of revealed truth are not admitted, is an imperfect and a dangerous system. It will be seen later whether those contentions of the Church of Rome are sound, and whether they are supported by the facts of history or current experience. At present we shall confine ourselves to a statement of the position of the church. It will be seen that, on account of its attitude on this question a really national or common system of schools is an impossibility in a community in which there are any Catholic citizens, if their contentions are admitted. If Roman Catholics may claim exemption from the operation of any law of any state of which they are subjects or citizens, on the ground that conformity on their part to the law would be incompatible with certain conscientious convictions of theirs, may not the Jew, the Quaker, or the Mormon claim with equal right a like exemption? If the soundness of the claim of the Roman Catholics is admitted, that of the others cannot be reasonably denied. But if the general principle is admitted, and all the sects should make the claim, it is clear that no general system could be instituted. It may be urged, as it has indeed already been urged by implication, on behalf of the Roman Catholics, that as a practical fact, the other sects do not make any such claims, and even if they did, their claims would be based on mere "isolated or eccentric opinion." The flimsiness of such an argument, however, is palpable, because if conscience is admitted to be a reasonable basis of claim to exemption, the number of any sect which may entertain the conscientious objection to the law, obviously cannot be a factor in the case.

National Schools Specially required in Manitoba.

We have endeavored to make it clear why in a community in which the people govern themselves, a system of state education is necessary. Great Britain is a constitutional monarchy in name but is in fact a democracy and in some respects is the most advanced democracy that has ever existed. The great autonomous colonies of Britain are also democracies. In the mother land itself, where the population is mostly native to the soil and speaking practically one language, state education has been found imperative, and is making vast headway in face of the enormous aggressive power and the great *vis inertia* of vested interests and traditional custom.

If public education has been found necessary in a country like Britain, the necessity is greatly emphasized in a new community like Manitoba, with its heterogeneous and polyglot population, and the great diversity of intelligence and ideas which characterize its yet unassimilated elements. Many of the foreign immigrants, apart from their ignorance, have had so little opportunity in their previous experience, of acquiring any conception of the rights, the duties, or the responsibilities of the citizens of a free country, that their presence in large numbers would form a distinct menace and danger to the continued freedom and stability of the government, unless means were taken to ensure an education for their offspring.

Confronted with these conditions the legislature of Manitoba in 1890 enacted a law, or rather laws, which provided for the education of all the children of the province. The education provided for is entirely free from sectarian religious teaching. The curriculum in the schools is under the supervision of a department of education, which chooses the text books. The schools are placed, for purposes of local administration, under boards of trustees. It is optional with these trustees whether or not religious exercises shall be performed in the schools. When it is deemed advisable to introduce such exercises, their character is defined and their scope clearly limited by the law. No scholar is obliged to participate in these exercises, nor is he bound to make any declaration as to his reason for non-participation. The exercises occupy an almost infinitesimal portion of the entire working time, and are so arranged that the work, or the time of those not engaged in them, is not in any way encroached upon nor interfered with. It is our view that even these exercises, short and neutral as they undoubtedly are, should in the interest of absolute consistency, be eliminated. It is contended that they have a great ethical value, and that any doctrine involved is common to the religious creeds of the overwhelming majority, including Roman Catholics. There is the soundest reason for doubting the ethical importance of the religious teaching given in the schools at present, or at any time, and, while it is true that no doctrine is taught nor involved, which is not assented to by all sects of orthodox Christians, yet there are still others who have rights in the use of the schools, who, while they may not have expressed any positive objections to the religious exercises as at present conducted, cannot certainly express any approval of them. If these latter, however, claimed the use of the schools for the instruction of their children in their own peculiar tenets, it would manifestly be very difficult to accommodate them, and perhaps even more difficult to furnish them with an adequate reason why they should, if not accommodated, thus be virtually discriminated against, on account of their religious views.

Roman Catholic claims the obstacle to State Education.

As a practical fact, however, the only interest which has expressed positive dissatisfaction with, or objection to the present system, is the Catholic Church. It does not object to the teaching on the score of ineffiiciency in regard to secular training. As has already been stated, it takes the arbitrary ground that any system of education which is not under its control, in which its doctrines are not inculcated and in which

its various claims and pretensions are not unquestioningly received, is perilous to the eternal wellbeing of the scholar.

Let us see what the attitude of the Church of Rome involves and on what it is founded. This church as we have already stated, contends that it is the sole authorized interpreter of revealed truth to mankind. All other forms of religious belief it asserts, are schisms or heresies, even those in which the essential spiritual doctrines are identical with its own. These other Christian bodies are branded as sects and heresies, because they claim to have a knowledge of revealed truth obtained outside and independently of the Church of Rome. The Pope, the head of the Church of Rome, is asserted to be the Vicar of Christ and to hold his office as the spiritual successor of St. Peter, by the direct authority of the Most-High, He is *ex cathedra* an infallible arbiter in questions of faith and morals. He claims to be, (indeed this claim is an inevitable corollary of the infallibility doctrine,) above all princes and states. Although in these later days the pretension to temporal supremacy has been only guardedly asserted, it has never been withdrawn, and indeed it could not be with any consistency, so long as the doctrine of papal infallibility is held. In using the expression "temporal supremacy," we do not refer to the mere political and civil government of the portion of Italy known as the Papal States, but are using the expression in its widest sense. In a comparatively recent encyclical the present Pope Leo XIII, declared that when the obedience of the Catholic to the state is in conflict with his obedience to the church, his first duty is to the church. How could it be otherwise? An infallible arbiter in faith and morals cannot restrict the application of his decisions or injunctions to mere abstract philosophical or theological problems. Faith and morals are interwoven with all the various practical transactions, political, commercial and personal in which mankind are engaged. There is no different kind or standard of morals for application in the realms of theology from that which governs in the practical affairs of men's lives.

If, then, the Pope is an infallible arbiter in faith and morals he ought to wield a supreme authority in all human affairs. Free constitutional government is based on the theory that the state (that is the majority of the people) is the supreme authority within its own borders, and that the people composing that majority have sufficient intelligence to rule themselves. This theory of government, however, is in direct conflict with the pretensions and polity of the church of Rome, and is incompatible with the doctrine of papal infallibility. If the claims and doctrines of the Roman Catholic church are valid and sound, the principles of democratic government are unsound. A loyal citizen of a democratic state can acknowledge no other nor higher authority in civil or political affairs than that of the state. A Roman Catholic must admit the superior claims of the Pope or the church. He cannot therefore, in the last resort, be a loyal citizen of a democracy. This is the conclusion which must be arrived at by the application of the process of analytical reasoning to the claims and doctrines of the church. And the accuracy of the deduction is demonstrated by the history of the operation of the doctrines alluded to in nearly every European State.

History has shown that, in a state which contends for absolute freedom, the attitude and policy of the Catholic church have always been a source of danger and apprehension. The history of England for several centuries shows this in almost every page. The policy of the church of Rome in England, as in every other European country, has been to throw its influence into the scale in behalf of despots, or would-be despots, in return for a promised acknowledgment of the church's pretensions on the part of the would-be despot. The interests of the masses have never been understood by, nor have they had any consideration at the hands of the church of Rome. It is the traditional foe of democracy, of the enfanchisement of the masses, and of every movement calculated to improve the lot of the proletariat. It is true that, within very recent years, it has been the policy of the Pope and some of the leaders of the hierarchy to make abstract and general protestations of sympathy with democracy, especially in the United States. But in view of the claims and doctrines of the church, such declarations may be accepted merely as an indication that the hierarchy appreciates the growing power and the coming dominancy of democracy. The idea of a Roman Catholic democracy is paradoxical. In an autonomous republican community in which the large majority of the people are Roman Catholic, the government is not a democracy. It is a theocracy—a government by the church, which is perhaps the most harrassing and unbearable sort of tyranny now known. Stagnation and unprogressiveness, material and intellectual, or turbulence and revolution, or all of them, are the distinctive characteristics of such communities. Quebec and the South and Central American republics, may be cited as illustrations of the results of pseudo-democratic government with a church in actual control.

The Church of Rome and Tolerance.

It may be said that all these considerations might have weight in other countries, and under different conditions, but that in this country public intelligence is so high, the non-Cotholic majority so powerful, and democratic institutions so firmly grounded, that there is not the slightest danger of the church of Rome ever attempting to give practical enforcement to the doctrines and pretensions alluded to. It may also be said that any apprehension on this score evinces the spirit of the "Orange bigot" or of the "zealot of the P. P. A." Just in this connection let it be borne in mind that, while the leading spirits of the Catholic church (which has ever had at the head of its administration men of great diplomatic capacity) see the necessity for toning down and keeping in the background, those arbitrary dogmas and claims which are antagonistic to the spirit of modern progress and popular government, not one of these claims has been renounced or receded from. On the contrary, we see an undemonstrative, but incessant and uncompromising warfare, being carried on by the church in the midst of the most enlightened and freest communities of to-day, against the institution which is the most essential to the safety and continuance of government of the people by themselves. We see also professing non-Catholics, under the plea of maudlin "tolerance," and even in the name of "liberty," take up the advocacy and defenc eof

the case of an organization whose doctrines and principles would render tolerance on its part an inconsistent farce, and whose claims at once fall to the ground if it can be shown that men have a natural right to liberty. We see expressions by the leading ecclesiastics of the Catholic church in the United States, which are couched in conciliatory language, and are calculated to produce the impression that these dignitaries are imbued with the spirit of tolerance and of admiration for the principles of popular government. There is reason to fear, however, that these expressions are prompted more by the superior diplomatic acumen of the prelates, than by any intention on their part to abandon any of those pretensions, in the light of which the genuineness of their tolerance is at least open to suspicion. Some of the minor clergy, however, are not so diplomatic, but are more consistent. In an article in the Western Watchman, a Roman Catholic paper published in St. Louis, and edited by Father Phelan, the following passage appeared recently : "We would draw and quarter Protestantism ; we would impale it and hang it up for crows' nests ; we would tear it with pinchers and bore it with hot irons ; we would fill it with molten lead and sink it into hell-fire a hundred fathoms deep."

This chaste and peaceful passage is, as our readers may observe, redolent of tolerance and calculated to promote that sentiment of brotherly love which, we presume, it is one of Father Phelan's offices to inculcate. Another Catholic organ, the Boston Pilot, recently contained the following :

" No good government can exist without religion ; and there can be no religion without an Inquisition, which is wisely designed for the promotion and protection of the true faith." *

Now the reverend gentlemen who pen these *morceaux*, are doubtless quite sincere, and are much more consistent than their superiors, but their utterances could hardly be pronounced as exemplifying a high degree of "tolerance."

No discrimination of any sort is attempted to be made against Catholics in Manitoba by the legislation of 1890, but if such discrimination had been attempted the province might have been able to give some color of precedent and sanction for the attempt. By the constitution of Great Britain a Roman Catholic cannot occupy the throne. Why this significant discrimination ? History will show. The monarch of England must be a Protestant, because he is the constitutional head of a state which asserts its absolute supremacy in the control of its affairs. In view of the nature of the pretensions of the church of Rome, it is recognized that no individual who admits these pretensions, is fitted to loyally discharge the duties of sovereign of such an empire as that of Great Britain. The history of the Stuart dynasty in Scotland and England demonstrates the necessity for such a provision in the British constitution.

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* It is but fair to state that since this work was first published the editor of the "Pilot" has denied that this originally appeared in that journal. The writer obtained the extract from an article by a writer in a high class American review, who attributed its origin to the "Pilot." It may be added that, although the writer of this accepts the statement of the Pilot editor, no admission of the inaccuracy has since appeared in the American review in question.

Conscience not a Valid Plea for Exemption from Taxation.

It may be asked: what bearing has all this on the Manitoba school question? It has the most cogent bearing. For it is only on the assumption of the soundness of these pretensions, that the hostility to the Manitoba school legislation is attempted to be, or can be justified. This legislation is admitted to be admirably adapted, in a social and economic sense, to the conditions existing in the province. But considerations of economy or of national progress or unity, count for nothing when the interests of the Church are involved. In effect the Church simply says: "Neither our authority nor our claims are recognized in this system of education; therefore we oppose it. We enjoin our communicants against countenancing it, and as the church is the rule of conscience for Catholics their objection is therefore a conscientious one. It is true that if you admit the principle that the plea of conscience is a valid one, in support of a claim for special privileges or exemptions, your system will become impracticable. But that is no concern of ours. The dictum of the church is the law of conscience for Roman Catholics and that is all there is about it." Now let us carefully avoid being misled by the specious argument of conscience. The mere fact that a man has a conscientious objection to any law which the people deem advisable to enact in the common interest, cannot, manifestly, be accepted as a valid reason for his exemption from the operation of that law. What is the authority which is to determine when a conscientious scruple becomes a mere fad or whim?

We are informed on credible authority, that the Plymouth Brethren, a religious sect who hold most of the essential tenets common to all Christian denominations, do not believe in the payment of taxes at all, and pay only because they must. These people, it is alleged, believe that the total abolition of government, the reign of anarchy, would hasten the advent of the millenium. They reason, we presume, that as it is very wrong to do anything to postpone the millenium, the payment of taxes by which governments are sustained, is sinful. The Plymouth Brethren are, in their personal lives and conduct, a very moral and right-living people. Their views on the question of taxation are, presumably, entirely conscientious. But so long as the majority still cling to mundane notions as to the necessity of some sort of order, pending the arrival of the millenium, it is probable that the Brethren will continue to pay taxes.

With special reference to the case of education in Manitoba, it may be said, in short, that if conscience be admitted as constituting a full and satisfactory ground for exemption from taxation for the support of the schools, a provincial system of education would be an impossibility. The necessary theory of monarchical government is that "the king can do no wrong." For the purposes of a democratic state, that might be translated "the will of the majority is always right.' In the latter case the theory is much more in accord with the practical results than in the former.

The Political Policy of the Church Costly to the People.

The enormous cost to the toiling masses, of the civil policy of the church of Rome is only faintly realized. In Quebec we observe enormous loss to the people through corrupt and incapable government, which, there is too much reason to believe, is the indirect outcome of the church's influence and policy. The landscape in that province is characterized by the contrast of the frequent and stately ecclesiastical edifice, with the mean and humble cot of the simple *habitan*, out of whose toil and sweat the grand and costly piles have been reared. Lavaleye, the celebrated Belgian economist, is quoted in a pamphlet recently published by Dalton McCarthy, as follows: "Steady progress is very difficult in Catholic countries, because the church aims at establishing her dominion throughout, and the living energies of the people are almost exclusively employed in repelling the pretensions of the clergy." While Lavaleye's remarks had more especial reference to France and Belgium, it must strike the reader with what aptness they fit the case of Canada. A mere catalogue of the political disputes and troubles directly due to the aggressive political action of the Catholic Church in Canada would fill a newspaper column. Indirectly the policy of the church affects all Canadian legislation. Nothing can be done if Rome obstructs. And she obstructs often and effectively. What have been the so-called "politics" of Quebec? An unsavory mess of intrigue, corruption and extravagance. What is the result of this nauseating network of intrigue and corruption? Whilst the average condition of the patient, frugal, and industrious peasantry of Quebec is one not much removed from penury, the public treasury is in a condition verging upon bankruptcy, due to the almost incredible carnival of waste and dishonesty in which some of the political proteges of the church have revelled, and of which extravagance the church, in at least one instance, was a large beneficiary. But it is a notorious fact that, whilst the province and citizens of Quebec are in a condition of chronic poverty, the Roman Catholic church in that province is, so to speak, rolling in wealth. What renders this state of matters possible? Simply a low degree of intelligence on the part of the masses, whose toil must always and unfailingly pay for these extravagances, robberies and accumulations.

Are the Church's Claims Justified by its Works?

It would be expected that a corporation which professes to be the only authorized medium for the transmission of the truth of revelation to mankind, and claims the right to control and direct education, would show an excellence in the result of its work which would render comparison with that of unauthorized bodies ludicrous. What is the function of a church? Is the church an end in itself, or is it properly only the means to an end? If the latter, what is the end or object which churches exist to attain? Is it the inculcation of creed or dogma? Manifestly not. Creeds and dogmas are themselves only tools for the attainment of the

desired end, and are often so clumsy and faulty in conception and construction, that they hinder more than they help, distract more than they guide. What then is the end ? All religions, at least all Christian religions, agree that the highest attribute of God, in whose image man is made, is the perfection of his moral being. The chief aim of the churches then is, or ought to be, the training and direction of the moral nature of man, and the development of those powers of reason and intelligence of which he alone, amongst all terrestrial beings, is the possessor, and without which no conception of morality is possible.

Now, a church which is assisted in the attainment of these ends by the direct and exclusive authority of the ruler of the universe, whose earthly head is endowed with the attributes of divinity, to the extent of being infallible on questions of faith and morals, would naturally be expected to show results in its efforts for the moral and spiritual regeneration of mankind, beside which the performances of the heretical sects would seem ridiculous. But what is the fact ? In every civilized country in which the communicants of the Church of Rome form the mass of the people, morals, material prosperity and intelligence are comparatively low. In these countries the church has, or has had till within recent years, practically absolute control of education. What is the result ? That the percentage of illiteracy is very high, and (mark it well) the criminal statistics of these countries show that crime and illiteracy are almost invariably in an exact ratio.

Some Instructive Facts and Figures.

A very active advocate of the separate school system in Manitoba, Mr. Ewart, in an endeavor to show that the Catholic church is in no way opposed to education, quotes the following figures from the Encyclopedia Britannica, accompanying the extract with a somewhat sardonic remark to the effect that statistics are proverbially misleading :

COUNTRY.	CATHOLICS.	PROTESTANTS.	Scholars to every 1,000 Inhabitants.
Switzerland	1,084,400	1,577,700	155
German Empire	14,867,500	25 600,700	152
Luxembourg	197,000	400	142
Norway	350	1,704,800	138
Sweden	600	4,203,800	138
Netherlands	1,313,000	2,198,000	136
Denmark	1,900	1,865,000	135
France	35,388,000	610,800	131
Belgium	4,980,000	15,000	123
Austria	27,904,300	3,571,000	100
Great Britain	5,800,000	25,900,000	83
Spain	16,500,000		82
Italy	26,750,000	35,000	70

This table shows a good average of school attendance in such Catholic countries as Spain and Italy, when compared with Great Britain. But the figures, which would have been more to the point, are those showing the

relative efficiency and illiteracy in these countries. Here are some figures bearing on this point, taken from the same authority as Mr. Ewart's statistics, and which, we think, are a little more relevant to the subject. Spain is a country in which the population is practically entirely Catholic. Out of a total population of 16,000,000 there are only about 60,000 Protestants. It will be seen from the table quoted above that the school attendance in Spain per 1,000 persons is about the same as that of Great Britain. What is the result ? In the same article from which Mr. Ewart's statistics are taken it is stated that in Spain 72 per cent. could neither read nor write, and in another portion of the same authority it is stated that, in 1877, 75.52 per cent. of the population could neither read nor write.

In the article from which Mr. Ewart obtained his statistics, the following passage occurs : " That the clergy do not readily acquiesce in the changes that diminish their influence is excusable, but at the same time their demands have occasioned the most lamentable obstruction to education." The reason why Mr. Ewart did not quote this sentence may be readily inferred, and it may suggest a very good ground for his conclusion that statistics are unreliable. He seems to have introduced the above table, not because it has any bearing on the question under discussion, but simply with a desire, perhaps not unnatural, to distract attention from the very suggestive fact that the separate school advocates have not a vestige of historical or statistical fact to justify their contentions.

The same advocate, who is a professed Protestant, calls for the admission of the Catholic claims for special privileges, in the name of tolerance and liberty. Now, we have endeavored to show that the friend of tolerance and liberty must, if he fully understands the basis of the Catholic claims, oppose them, because they are founded on doctrines which recognize neither tolerance nor liberty. It may be objected that this is a mere philosophic argument, dependent entirely on theory or abstract deduction. Let us see whether practical experience justifies the deductions. Again, referring to the same authority, the Encyclopaedia Britannica, and still on the subject of education and religion in Spain, we find the following : " By the constitution of 1876 non-Catholics are permitted to exercise their own forms of worship, but they must do so in private, and without making any public announcement of their services." This is a specimen of the tolerance and consideration which is extended to "conscience" in the countries in which the Church of Rome is in power ! It may be added that before 1876, even the private exercise of any religious exercise other than that of the Church of Rome, was prohibited by law, was vigilantly ferreted out, and severely punished, at the instance of the clergy. It was only in the face of strenuous opposition on the part of the clergy, that even the above measure of "liberty" was attained. Spain was the theatre of the operations of the Inquisition, that admirable device for the propagation of liberty and tolerance, which some tolerant person would like to see established in America at the present time.

Let us now turn briefly to Italy, that land of ancient splendors, the very footstool of the church, and possessing the most homogeneous Catholic population of any state in the world. Mr. Ewart's authority regarding the state of education in Itlay, says : "As late as the census of 1861 it was found that in a population of 21,777,331 there was no less than

16,999,701 (nearly 80 per cent) 'analphabetes' or persons absolutely destitute of instruction, absolutely unable to read. * * * While 59 per cent. of the men married in 1866 were obliged to make their mark, 78 per cent. of the women were in the same case. In the Basilicata (an Italian province with a population of over half a million) the illiterate class comprised 912 out of every 1,000 inhabitants." It is true that since the consolidation of the Italian states, matters educational have improved greatly in Italy, although the educational condition of the people is still deplorably backward. Mr. Ewart refers to this improvement as an evidence of the friendliness and eagerness of the Catholic church for the intellectual improvement of the people. But, unhappily for the force of Mr. Ewart's argument, he evidently does not know (otherwise he would presumably have mentioned the fact) that the great movement for popular education was begun and carried on in the teeth of the most bitter and uncompromising hostility of the church, by the anti-Clerical and United Italy party. A recent article by Monsignor Satolli, the representative of the Pope in America, in the North American Review, shows that while the church in Italy has been whipped into competitive effort by the energetic action of the civil power, it still regards the state education with an undisguised repulsion, which, in view of the results of its own centuries of fruitless control, seems positively fatuous.

Whilst we see the unsatisfactory educational or intellectual condition of the masses in these countries whose interests in that regard have been almost wholly under the control, or at the mercy of the Church of Rome, what do we find when we look into the ethical results of its supremacy ? In Spain and Italy, crime is prevalent, particularly crimes of violence. According to a recent writer on this subject, there are, for every murder committed in England, forty in Spain and two hundred in Italy. The habits of the lower orders are semi-barbarous. The bull fight and vendetta are national institutions, and in Italy, up till the most recent years, the profession of brigand had attained a respectability which drew to its ranks not a few of the old nobility, who did honor to their ancient lineage alike by the daring and thorough going character of their rascality, and by their devout attention to their religious observances between atrocities. The material condition of these nations corresponds with their educational and moral condition. Each of these nations has been, in turn, the most opulent and formidable power of the earth. To-day, Spain has gone hopelessly to the rear, and Italy owes its recent partial recovery of political status to the fact that it has thrown off both the civil and intellectual domination of the Church of Rome. Favored by nature with rich soils and good climates, the peasantry and the proletariart of these countries live in a condition of extreme, and, in some cases and localities, incredible poverty ; their taxation is grindingly onerous, while their national revenues are strained by the burden of heavy debts.

Thus we see three classes of phenomena which are, as a rule, found in combination. Where we have a low average standard of education and intelligence, we find a low degree of morality, and a low material condition. The simultaneous existence of these three conditions is not mere coincidence. The two last are the corollary and result of the first.

Now, we have seen from the statistics that in these Catholic countries, the average of school attendance has been fairly high. The very high illiteracy cannot be due to want of opportunity for instruction. The reasonable inference then is that it is the kind of instruction which is at fault. Possibly, it might be said, so much effort is directed to moral development, that the intellectual is neglected. This however, is not a feasible explanation, because the moral nature can only be developed through, and co-ordinately with the intellectual faculties. But again, we do not need to rely on a merely theoretical explanation. We have concrete facts. We know that the morality in these countries is low. If then, the school attendance has been good, whilst the intelligence and the moral status of the people are extremely low, we must conclude that the instruction is neither calculated to improve the mind nor the moral nature. The teaching imparted, it is to be inferred, is principally of that kind which is called, or rather miscalled, "religious." It is composed largely of dogmas and formulas and injunctions, calculated to imbue the learner with the importance of the church, as an entity apart from all other considerations or ends. The ethical objects, for which solely the church exists, or ought to exist, are lost sight of. Mundane and political considerations obscure the true object. The interest of the church, as a wealthy and powerful corporation, becomes of more importance than the object for which it was originally organized. The means becomes the end. Religion, under such instruction, becomes an idolatry. It becomes a worship of the church, instead of the worship of God.

In those European and American countries where the majority of the population is largely non-Catholic the education of the Catholic portion, while always inferior to the Protestant, is still incomparably higher than is the education in those countries where the population is almost exclusively Catholic. The proximity and the example of Protestant vigor, and intelligence, and independence, seems by its contagion to stimulate the Catholic citizens and the clergy. But in all countries where there is a Catholic and a Protestant population, it will be found that the former is on the average much inferior to the latter, both intellectually and morally. Take the case of Canada. The writer has not been able to learn of the existence of any statistics showing the proportion of illiteracy, to religious beliefs. But a reference to the official criminal statistics of the Dominion for 1892 shows that all the principal religious denominations are represented amongst the criminals as follows: (The figures in regard to population were obtained from the Dominion census reports of 1891.)

	Population 1891.	Percentage of criminals 1892.
Roman Catholics	1,992,017	48.8
Methodists	847,765	9.8
Presbyterians	755,326	7.1
Church of England	646,059	18.3
Baptist	303,839	2.6

An analysis of the figures in this table shows that the Roman Catholic population of the Dominion furnishes 70 per cent more criminals than an equal number of all the Protestant population. But analysis will also

show the striking fact, that the proportion of criminals acknowledging allegiance to the Church of England, is even greater than that of the Roman Catholic Church. Several reasons might be given in explanation of this remarkable fact. In the first place there is very large immigration from England, of a very poor class, who are under special temptations to crime in a new country, and most of whom claim the church of England as their church. Again, many of these immigrants belong to various sections of the "submerged tenth" of England, and are sent out to Canada by philanthropic agencies with a view to reformation or reclamation, which desirable ends, it is to be feared, in many cases are not achieved. But as we are citing the statistics we must abide by their showing, regardless of how it may affect our line of argument. It will be seen that the percentage of Roman Catholic criminals is more than twice as great as that of those of the next most numerous religious denomination in Canada (the Methodists). It is fully two and one-half times as great as the Presbyterian, and nearly three times as large as the Baptist percentage. The only admissible reason for the existence of a church is that it teaches men to live aright. Here we have a church which lays claim to the most exclusive monopoly of the authority to convey the will of God to man. It also contends that its relationship with the Deity is so intimate that its visible head is actually endowed with one of the essential attributes of divinity. How incompatible are these pretensions with the results achieved by the supervision of the church over the moral and educational welfare of its proteges! Judgment by results is the only sure test. "By their fruits ye shall know them," is the dictum of an authority which even the church will not refuse to recognize.

Much statistical matter has been adduced, and much more might still be furnished, to show that the Roman Catholic church has failed to justify its pretensions by its performances. The position of this church has been especially dealt with not because of the existence of animus towards it as an exponent of revealed or speculative spiritual doctrines, but because its polity, which impels it to constantly interject itself as a factor in civil politics, and renders it a standing menace to the continuance of free institutions, is really the root of this "school question."

It is far from being the intention of the writer to suggest that the essential spiritual doctrines of the Roman Catholic church are wrong. It is merely intended to show that the claims to exclusive authority, and the consequent claims to exclusive privileges, have no basis, in so far as the validity of these claims may be determined by the actual results of the work of the Church.

Education in Secular Subjects a Moral Agent.

The denominations whose members and adherents behave themselves best, are those which place little or no stress on the necessity of teaching of religion in the schools. It is true that considerable sections of the clergy in the Methodist and Presbyterian bodies believe in the necessity of religious sanctions along with secular teaching for the development of moral growth. But the difference between their position and that of the ecclesiastics of the churches claiming exclusive "authority" is a great and

essential one. The former contend that common Christian truth should be taught, the latter that their distinctive doctrines are necessary. In Scotland and Protestant Canada the illiteracy is comparatively small; so is the percentage of crime; so is the proportion of religious teaching to secular. In Italy and Spain and Mexico illiteracy is deplorably prevalent; the percentage of crime is large, and dogma and formula have been taught in the clerical schools to the almost entire exclusion of instruction which would inform the mind and develop the judgment. What is the inevitable conclusion from these facts? Simply that the acquisition of knowledge and the development of the intellectual faculties tend of themselves to awaken and develop the moral nature. As a matter of fact, true or high morality cannot co-exist with low intelligence.

In the Canadian parliamentary records of the statistics of crime for 1892, to which reference has already been made, the following table appears:

	Percentage of Criminals.
Unable to read and write	20.3
Elementary	74.3
Superior	2.2
Not given	3.2

Now this table clearly shows that crime is largely the product of ignorance. Persons unable to read and write form 20 per cent of the criminal class, whereas all persons unable to read and write, who are of an age to be convicted of crime, form a very small proportion of the entire population. Practically all the balance of the criminal class is drawn from the class of persons who have an "elementary" education. A person possesses in law an "elementary" education if he can read and write. It is to be inferred, from the nature of the other figures in the table, that the great bulk of the 74 per cent of persons having an elementary education, were able to read and write, and beyond that were practically uninstructed. It is true that many wise and moderately minded men, who are favorable to a common school system, believe that moral teaching cannot be inculcated without religious sanctions. But what are "religious sanctions"? It is to be feared that in the minds of many very good men they are synonymous with doctrines and dogmas, and especially those peculiar to their own denominations. To say that a moral sentiment or principle cannot be instilled without reference to some doctrinal tenet, is to take a position the soundness of which has not yet been demonstrated.

This is not said with any idea of detracting from the value of doctrines which enforce sound moral precepts, but in order to suggest that a system of education in which neither doctrines nor creeds are taught is not necessarily immoral and "godless." The most moral elements of the people of Canada are the most intelligent, and they have been trained in secular knowledge, in schools in which the "religious instruction" has been almost infinitesimal in quantity, and has been confined to those general subjects calculated to directly inculcate moral principles, rather than to instil an appreciation of distinctiveness of creed. Is it straining the credulity to ask one to believe that if these infinitesimal and perfunctory exercises were entirely omitted, the present generation of scholars would

not in their time be at least as moral as the present generation of adults? France and the Australasian colony of Victoria are cited as "frightful examples" of the result of "godless" education. But, with all due respect to the sincerity of the worthy men who think they see their conclusions justified by the conditions in these communities, it must be asserted that absolutely no evidence has yet been furnished which could be accepted as proving that the unsatisfactory moral conditions which are said to exist in these countries has any traceable connection with the secular educational systems.

Enough has probably been said, to make a reasonably good case for contention that schools in which articles of denominational creed are omitted, are not "godless schools," and that, conversely, there is no especially "godly" or desirable result to be attained by such instruction in the schools.

In the face of the comparative results of so called "religious instruction" and of education which is practically secular, it seems almost incredible that honest and intelligent men who are satisfied with the present system, can hold up their hands in horror when they contemplate the dire results which they picture in their minds, would ensue from the abolition of the present meagre and prefunctory religious exercises. It is true that no system of education which really aims at the development of the individual and the progress of the people is worthy of the name, if it fails to ensure the awakening and development of the moral nature. Indeed, not enough attention is given to this aspect of the educational problem in even the most efficient educational systems of to-day. But in order to secure progress in this direction it would be paradoxical to revert to methods whose inefficacy has been amply demonstrated. The results produced by the separate schools in Manitoba, prior to the act of 1890, were simply deplorable. When we consider that the adult native Roman Catholic population of this province to-day is in a condition of pitiable and almost primeval ignorance, when we are shown that the examination papers for a person attempting to obtain a first class teacher's certificate in the Roman Catholic schools, are largely composed of questions calculated to elicit his knowledge of the peculiar dogmas of the church, and his impressions as to its overshadowing importance, and of questions on trivial points of deportment in addressing the clergy ; when we find grown men who are so innocent of the necessary facts of civilized life, that they are ignorant of the very names of the calendar months, and measure time by the *fete* days of the saints (this is no hypothetical illustration) ; when we find such results of the prevalence of separate schools, controlled by the Roman Catholic clergy, and when we find these results correspond exactly with the experience in all other countries in which education is in the same hands, who will say that the Manitoba legislature was not amply justified, if on no other ground than that of consideration for the Roman Catholic children themselves, in ending this futile and pernicious system.

Origin of Separate Schools in Manitoba.

In the preceding pages we have dealt with the general ethical and political questions involved in, and suggested by, the position of the Roman Catholic church in this controversy. Trusting that we have succeeded in furnishing the reader with a standpoint from which he will be able to take a broad and comprehensive view of the case, and of the issues involved, we shall now proceed to deal with the historical facts, and the special legal and political aspects of the question.

In 1867 the Dominion of Canada was created by the federal union of the provinces, or colonies, of Nova Scotia, New Brunswick, and the then province of Canada. The Imperial sanction of Confederation, and the recognition of the Dominion as a political entity, are embodied in the British North America Act, an enactment of the British parliament. This act, which is the Canadian constitution, is an epitome of the results of the negotiations carried on, of the arrangements and agreements arrived at by the representatives of the interested colonies, and of the Imperial government. It defines the relative status and powers of the federal and provincial legislatures. Certain subjects of legislation are specifically named as being within the exclusive power of the federal parliament, and certain others (of entirely provincial concern, of course), as belonging exclusively to the provincial legislatures. But all legislative power not specifically conferred upon local legislatures, is reserved to the Dominion. In this important respect the constitution of Canada differs from that of the United States, which reserves to the states all legislative power not expressly conferred on the federal authority. It is, to some extent, because of the limitation of the local authority in the Canadian constitution, that the Manitoba legislation of 1890 has become a "question."

One of the subjects, declared by the British North America Act to be exclusively within the power of the provincial authorities, is that of education. This power is, however, given subject to restrictions. The authority and its limitations are defined in section 93 of the British North America Act. As this section, and its sub-sections, are the only portions of that act having any immediate bearing on our subject, it will be quoted in full further on in this paper.

Red River Just Before the Union.

When the federation of those older provinces was consummated, the vast territory, of which the present province of Manitoba formed a portion, was for the most part practically a *terra incognita*—a "great lone land." A large proportion of its sparse population were more or less nomadic in their habits. There were hunters, trappers and traders, and a few adventurers of various nationalities. These, with the Indian tribes, practically com-

posed the population. Civilization was represented by the Hudson Bay Company's officers, a few clergy of the Roman Catholic, Presbyterian and Anglican denominations, and a handful of merchants and agricultural settlers.

The territory was, of course, under the sovereignty of Great Britain, but the only government which the country knew or needed (under the then existing circumstances) was administered by the Hudson's Bay Company's authorities, with the sanction, of course, and at the instance of the Imperial government.

The great potential agricultural wealth of the territory had been understood in Canada, and because of the existence of this wealth, and for other reasons of a political nature, it was deemed desirable to embrace the great region in the Canadian confederation. An arrangement had been made by the Canadian government, with the Hudson's Bay Company by which the former was to pay the latter £300,000 as compensation for the surrender of part of its lands and its magisterial jurisdiction.

The Settlers had Real Grievances.

It would seem that the Canadian government, having thus arranged with the Hudson's Bay Company had considered that the work of annexing the territory was virtually completed. It had forgotten about the inhabitants of the country and their rights ; or it had calculated that, these inhabitants being so few in nnmber, and of such primitive habits and understanding, they probably did not themselves realize that they had any rights, and that, if the matter required any consideration at all, it could be postponed to a more convenient season. The government had forgotten that the actual inhabitants—the resident population of a country—have rights which are paramount to all other claims.

The population in the settled portion of the territory consisted about the end of 1869, of 12,000 souls. Of these 5,000 were French half-breeds, 5,000 English half-breeds, the remaining 2,000 being white persons. Many of the latter were Canadians, and appear to have been markedly characterized by the speculative, adventurous, fortune-hunting spirit which is the distinctive trait of the individuals comprising the advance guard of civilization in a new country. He who has dwelt in a frontier land, in the early phases of its development, knows that the pioneer speculator is not a person whose personal progress or prosperity is likely to be retarded to any appreciable degree, by his fastidious sense of honor, or by the searching scrutiny to which he submits his own commercial acts. He is generally admitted, indeed, to acknowledge very little moral restraint in transactions involving considerations of *meum* and *tuum*. His ideal may be summed up in the vulgar expression "get there," and if in "getting there," it should incidentally happen that some other person had to be over-reached, the enterprise would probably be all the more attractive, and success all the more enjoyed on that account.

It would appear that, in the case of this new territory, even the officials of the Canadian government, had conducted themselves in such a manner as to inspire the simple-minded natives with a feeling of anything but confidence and security. The land-grabbing spirit was rampant. And

it is to be feared, that not a few native owners were induced to part with their holdings for little or no consideration, by means which it would be far from exaggeration to term unscrupulous. Not only this, but a certain highhandedness on the part of the officials, their undisguisedly contemptuous treatment of the natives, and their apparent inability to comprehend the possibility of these inhabitants having any rights which they were bound to respect, filled the minds of the natives with resentment and apprehension.

The 10,000 half-breeds who constituted five-sixths of the entire population were, as we have seen, about equally divided as to nationality. Of the French half-breed, Mr. Begg, the historian of Manitoba and the Northwest, says: "The French half breed, called also Metis, and formerly Bois Brule, is an athletic, rather good-looking, lively, excitable, easy-going being. Fond of a fast pony, fond of merry-making, free hearted, open-handed, yet indolent and improvident, he is a marked feature of border life." It is this wild and intractable, but still attractive, child of the plains who, we are asked to believe, was so calculatingly solicitous to secure the permanency of Roman Catholic separate schools. "As different as is the patient roadster from the wild mustang, is the English-speaking half-breed from the Metis." This is a description of the other half of the native population by the same authority.

The Canadian government, before it had acquired any territorial rights or jurisdiction, sent a party of surveyors into the country, with instructions to subdivide the very lands which these natives owned by the right of occupation, and of squatter sovereignty, if by no other. These simple and inoffensive people saw the lands which they had been always accustomed to regard as their property, on which most of them were born, and on which stood their homes (such as they were), dealt with by the strangers, as if their rights in them were so flimsy that the strangers need take no account of them. As the work of surveying went on, these natives saw the speculative adventurer, to whom allusion has already been made, acquire possession of the most desirable lands by the following simple process: "When a lot was chosen by an individual he proceeded to cut a furrow round it with a plow, and then drive stakes with his name marked upon them into the ground here and there. This was considered sufficient to give the claimant a right to the land, and in this way hundreds of acres were taken possession of for the purpose of speculation. It seemed, as soon as there appeared a certainty that Hon. Wm. McDougall was to be governor, that the men who professed to be his friends in the Red River made it a point to secure as much of the country to themselves as possible. It is notorious that the principle one in this movement, the leader of the so called Canadian party, staked off sufficient land (had he gained possession of it) to make him one of the largest landed proprietors in the Dominion. Can it be wondered at if the people looked with dismay at this wholesale usurpation of the soil? Is it surprising if they foresaw the predictions of the very men who acted as usurpers as likely to come true, namely, that the natives were to be swamped by the incoming strangers?"

The above extract from Mr. Begg's valuable and interesting work, "The Creation of Manitoba", throws a powerful light on the sinister

methods and transactions, which have characterized all dealings with lands in the new territories, by Canadian governments. The distribution of the nation's natural resources amongst speculators and partisan heelers has been the cause of incalculable cost to the people of Canada. It led to the armed resistance to their encroachments by the poor Metis in 1870, and it was the main cause of the later uprising on the Saskatchewan in 1885. It has also been the cause of great direct loss to the country, quite apart from the vast indirect loss, moral and material, resulting from the fact that considerable portions of the proceeds of these misappropriated resources have been used to debauch and corrupt the electorate. It is to be feared that the evil is far from being extinct.

The Beginning of the Troubles.

The chief of the surveying party, Colonel Dennis, communicated to the government at Ottawa the probable results of perseverance in the survey without an arrangement with the natives; but to no purpose. Under the peremptory instructions of the Canadian Government the survey was continued till the resistance of the Metis rendered the work unsafe, and indeed, impossible.

Who shall say that the action or the attitude of the Metis, in resisting the usurpation of authority over them, and the confiscation of their properties by a government which had no rights of either treaty or conquest, was not justified? When they found that the government was being transferred from the Hudson's Bay Company to the Dominion of Canada, without any consultation with them; when they saw the emissaries of the Canadian government, even before this transfer had been consummated, parcelling out their lands and disdainfully ignoring their existence, is it wonderful that, as Lord Wolseley (then Col. Wolseley) points out, the impression should have obtained amongst these people, that they "were being bought and sold like so many cattle." Lord Wolseley adds: "With such a text the most common-place of democrats (he doubtless meant demagogues) could preach for hours; and poor indeed must have been their clap-trap eloquence, if an ignorant and impressionable people such as those at Red River had not been aroused by it."

They were aroused. They organized themselves for resistance to the assumption of authority by the Canadian government, till proper terms had been made with them. The French element, organized under Louis Riel, elected twelve delegates, and invited the English natives to elect other twelve. The invitation was responded to. The twenty-four delegates met on November 16th, 1869, and adjourned because of their inability to agree as to the proposal to constitute a provisional government. On December 1st they re-assembled, and formulated the first Bill of Rights, which is as follows:

List of Rights.

1. That the people have the right to elect their own legislature.
2. That the legislature have power to pass all laws local to the territory over the veto of the executive by a two-thirds vote.

3. That no act of the Dominion parliament (local to the territory) be binding on the people until sanctioned by the legislature of the territory.

4. That all sheriffs, magistrates, constables, school-commissioners, etc., etc., be elected by the people.

5. A free homestead and pre-emption land law.

6. That a portion of the public lands be appropriated to the benefit of schools, the building of bridges, roads and public buildings.

7. That it be guaranteed to connect Winnipeg by rail with the nearest line of railroad within a term of five years; the land grant to be subject to the local legislature.

8. That for a term of four years all military, civil and municipal expenses be paid out of the Dominion funds.

9. That the military be composed of the inhabitants now existing in the territory.

10. That the English and French languages be common in the legislature and courts; and all public documents and acts of the legislature be published in both languages.

11. That the judge of the Supreme court speak the English and French languages.

12. That the treaties be concluded and ratified between the Dominion government and the several tribes of Indians in the territory, to ensure peace on the frontier.

13. That we have a fair and full representation in the Canadian parliament.

14. That all privileges, customes and usages existing at the time of transfer be respected.

This is the first of the three Bills or Lists of Rights which were admittedly adopted by the legislative or executive representatives of the inhabitants. It will be seen that there is no reference in the above list to education or schools beyond the slight reference in clause 6. A fourth bill of somewhat mysterious origin, and of hazy identity, plays a most important part in this question, and it would be desirable that the reader, in order to obtain a clear understanding of the historico-legal phase of this dispute, should closely follow the facts relating to these Bills of Rights. The Bill of Rights quoted above was adopted by the Council "without a dissenting voice."

Meanwhile the Hon. Wm. McDougall, who had been appointed by the Ottawa Government Lieutenant-Governor of the Territory, had been at Pembina, on the boundary, since October 30th, preparing to make his formal entry, as soon as the transfer should be consummated. The proceedings of the inhabitants had rendered this impossible.

History of Bills of Rights.

Three commissioners were then sent by the Canadian Government to endeavor to pacify the inhabitants, and effect a settlement. These were Very Rev. Grand Vicar Thibault, Colonel De Salabery and Sir (then Mr.) Donald A. Smith. These commissioners met the settlers in a mass meeting on January 19th, 1870. The meeting, a very large one, was held in the

open air, and so intense was the interest that, although the thermometer registered 20 degrees below zero, it lasted over five hours. Mr. Smith's commission was read and explained. The election of a council of forty was decided upon "with the object of considering Mr. Smith's commission, and to decide what would be best for the welfare of the country." Pursuant to this decision the forty representatives were elected, twenty by the French, and twenty by the English settlers. They assembled on January 26th, and elected Judge Black chairman. Sir Donald Smith, who seems to have taken the most prominent part in all these transactions, delivered an address at the opening. He also assisted in the discussion of the second Bill of Rights, which this Council of forty drew up.

This second list is much more lengthy than the first. It contains twenty clauses, and shows that the points to be discussed in dealing with Canada, had received much consideration in the meantime. Like the first list, it contemplated the entry of the Northwest into the Canadian confederation as a territory and not as a province. It made much more specific financial stipulations than the first bill did, and took great pains to guard the right of self government and the autonomy of the territorial legislature. The only reference to education which it contained is in clause 9, which reads: "That, while the Northwest remains a territory, the sum of $25,000 a year be appropriated for schools, roads and bridges."

Sir Donald requested the Council to send delegates to confer with the Dominion government at Ottawa, with a view to a proper understanding by that government of the "wants and wishes of the Red River people", and "to discuss and arrange for the representation of the country in parliament." In response to this invitation, Rev. Father Ritchot, Judge Black and Mr. Alfred H. Scott, were appointed delegates. The provisional government, of which Riel was then head, and which had taken possession of Fort Garry, was endorsed and continued in office by the council, and a general election for members (to the number of 24) of a new assembly, was ordered. Turbulent times ensued, however. Some complications arose, partly through misunderstanding, partly on account of occasional unwise acts of the provisional government, and partly owing to the imperfect nature of the means of communication and travel then in existence. A number of the Canadians were taken as prisoners by Riel, whose conduct on the whole seems not to have been immoderate, when his origin and training are taken into account. He however lost control apparently both of himself and his followers, and without trial, or rather after a burlesque of a trial, at which the accused was not present, one of the prisoners, Thomas Scott, was sentenced to be shot. This sentence was executed with cold blooded atrocity on March 4, 1870. This act was the beginning of the end of Riel, but as his history has no further connection with our subject, we shall leave him here. He seemed to have been a born agitator, not altogether destitute of good qualities. His intellectual endowment and his capacity for command have been extravagantly overestimated in some quarters. Want of balance and stability of character, as well as the heavy handicap which his lack of modern training and experience had placed upon him, unfitted him for the role which his ambition and his vanity impelled him to assume, and led ultimately to his tragic end. He was apparently devoid of executive capacity, does not seem to have been over-

courageous, and was in temperament of that peculiar combination, half-ecstatic, half-charlatan, which so readily obtains influence over the minds of a semi-civilized people.

The elections, which had been ordered by the Council of Forty, were held on Feb. 26, 1870. The first meeting of the twenty-four members of the new assembly was held on March 9. A resolution was adopted, declaring the unaltered loyalty of the Northwest to the British crown. A constitution was also adopted, and the provisional government confirmed and declared to be the only "existing authority."

Delegates Leave for Ottawa.

According to the arrangements made by the Council of Forty, the delegates appointed by that body, should have left for Ottawa as soon after the adjournment of the council as they could conveniently have done so. The turbulent occurrences to which we have alluded, of course made it impossible for them to leave in a properly representative capacity till matters had settled down again. When the act of the new assembly, however, had given the provisional government a constitutional status, that body gave its attention to the matter.

The delegates appointed by the Council of Forty were, as we have seen, Rev. Father Ritchot, Judge Black and Mr. A. H. Scott. Their instructions were embodied in the list of rights drawn up by the Council of Forty, which was Bill of Rights No. 2. This list, however, was not taken to Ottawa by the delegates. Much discussion having doubtless taken place in the assembly, and the desires and the requirements of the settlers more fully ascertained, the provisional govornment drew up a new Bill of Rights which was given to the delegates, and which they took to Ottawa.

The delegates left Red River for Ottawa with the Bill of rights entrusted to them by the provisional government on March 23, 1870. It will be well to make a note of this date, as it is very important. Now, it is the question of the identity of the Bill of Rights which was actually committed to their care, which forms the very centre of the battleground in what we have termed the historico-legal phase of the school question.

Before dealing with the very important question of the identity of the genuine Bill of Rights, let us consider the nature and causes of the occurrences which had taken place at Red River. Mr. Ewart, the legal counsel of the Catholics, dwelt at great length on this early history. Now, we could understand, for reasons which we shall presently explain, why these events should be described and cited in support of the contention that the Catholic party in this dispute is wrong, but it is impossible to conceive what assistance their case receives from the most elaborate recital of the events in question. For, be it carefully noted, the agitation which preceded the introduction of Canadian government to the Northwest was, as we have seen, of a purely agrarian character. It arose, as we have also seen, and was maintained, solely on account of the manner in which the Canadian officials and the Canadian adventurers were dealing with the

lands. The doubts and fears of the settlers regarding the safety of their properties, and as to the general treatment they should receive under Canadian government, after it should obtain control, were aroused, very reasonably and very justifiably, by the high-handed and unscrupulous actions of Canadians, before Canada had acquired any actual legal authority. Now, Mr. Ewart has gone to much trouble to show the arbitrary character of the bearing and actions of the Canadians, and has expressed much well-merited indignation at their conduct. But we are at a loss to understand why he has devoted so much time and space to this historical phase, unless it was his object to create an impression that all this agitation was in some way or other connected with, and had some bearing upon, the claims of the Roman Catholics in the present dispute. This is far from being the case. In all the agitations, disputations and demands, the subject of education was hardly thought of, and separate schools are not so much as mentioned. In all the numerous testimonies, cited almost *ad nauseam* by Mr. Ewart, there is not one word about schools, nor do we find in the records of any of the three representative bodies, whose proceedings we have referred to, any account of any discussion of the subject. On the two occasions in which it is mentioned in the Bills of Rights it is mingled with "roads and bridges," thus showing the importance attached to it. Even the last Assembly, which was in session when the delegates departed for Ottawa, seems not to have considered the question at all. Let us be clear, therefore, as to the origin and character of the agitation, and the demands of the people.

The Bills of Rights.

Now, as to the Bills of Rights. There has been much dispute as to the provisions which were contained in the Bill of Rights entrusted to the delegates by the provisional government, or to put it perhaps more clearly and accurately, there has been much dispute as to the identity of the bill which was actually entrusted to the delegates by the provisional government. There was a list of rights prepared by the provisional government as to the authenticity of which there is no doubt nor dispute. This list, which is Bill of Rights No. 3, it is contended by the province of Manitoba, is the only list which the provisional government ever drew up, and is the one which was given to the delegates. The Roman Catholic party, however say that still another list (No. 4) was prepared by the provisional government, and that it superseded No. 3. We shall present the evidence for each side.

Bills of Rights Nos. 3 and 4 contain each twenty clauses. We reproduce the first seven clauses of these bills, in parallel form. It may be remembered that Bills of Rights Nos. 1 and 2 contemplated the entry of the Northwest into Confederation in the position of a territory. It will be observed that Bill of Rights No. 3 of the provisional government, and also Bill of Rights No. 4, whose origin is still a mystery, both stipulate for the provincial status.

LIST NO. 3.

1. That the territories heretofore known as Rupert's Land and Northwest shall not enter into the Confederation, except as a province, to be styled and known as the Province of Assiniboia, and with all the rights and privileges common to different provinces of the Dominion.

2. That we have two representatives in the Senate, and four in the House of Commons of Canada, until such time as an increase of population entitles the province to a greater representation.

3. That the Province of Assiniboia shall not be held liable at any time, for any portion of the public debt of the Dominion contracted before the date the said province shall have entered the Confederation, unless the said province shall have first received from the Dominion the full amount for which the said province is to be held liable.

4. That the sum of $80,000 be paid annually by the Dominion government to the legislature of the province.

5. That all properties, rights and privileges enjoyed by the people of this province up to the date of our entering into the Confederation be respected, and that the arrangement and confirmation of all customs, usages and privileges be left exclusively to the local legislature.

6. That during the term of five years, the Province of Assiniboia, shall not be subject to any direct taxation, except such as might be imposed by the local legislature for municipal or local purposes.

7. That a sum equal to eighty cents per head of the population of this province be paid annully by the Canadian government to the local legislature of the said province until such time as the said populatiion shall have increased to 600,000.

LIST NO. 4.

1. That the territories of the Northwest enter into Confederation of the Dominion of Canada as a province, with all the privileges common with all the different provinces in the Dominion.

That this province be governed :

1. By a Lieut.-Governor, appointed by the Governor-General of Canada.

2. By a Senate.

3. By a legislature chosen by the people with a responsible ministry.

2. That until such time as the increase of population in this country entitles us to a greater number, we have two representatives in the senate, and four in the house of commons of Canada.

3. That in entering the Confederation, the Province of the Northwest be completely free from the public debt of Canada; and if called upon to assume a part of the said debt of Canada, that it be only after having received from Canada the same amount for which the said province of the Northwest should be held responsible.

4. That the annual sum of $80,000 be allotted by the Dominion of Canada to the legislature of the provinces of the Northwest.

5. That all properties, rights and privileges enjoyed by us up to this day be respected, and that the recognition and settlement of customs, usages and privileges be left exclusively to the decision of the local legislature.

6. That this country be submitted to no direct taxation except such as may be imposed by the local legislature for municipal and other local purposes.

7. That the schools be separate, and that the public money for schools be distributed among the different religious denominations in proportion to their respective population according to the system of the province of Quebec.

It will be seen by glancing at the first six clauses of both lists, that substantially the same demands are made in each bill, and in the same consecutive order, although there is a variation in the words in which the demands are stated. In the case of clauses 8 to 18 of both bills, inclusive, the same thing could be noticed—agreement in substance, but difference in phraseology. In clauses 19 and 20 the words are the same in each bill. It will also be seen that there is no reference in the seven clauses of No. 3 which are given above, nor in the first six clauses of No. 4, to education nor schools. Neither is there any reference in the thirteen clauses of both bills which we have not reproduced. The reasons for the omission of these clauses are, that they are rather lengthy, have no relevancy to our subject, and are not in themselves of absorbing literary or historic interest.

It will be noted that the essential difference between the two lists occurs in clause 7. In list No. 3, clause 7 provides for the payment of a subsidy to the province by the Dominion. In that list there is no reference whatever to schools or education. In list No. 4, clause 7 provides for separate schools ; and it contains no stipulations whatever for the payment of a subsidy. This important provision does not appear at all in list No. 4.

Which is the Authentic List ?

Before presenting the evidence which, we think, will enable our readers to form an intelligent opinion as to the origin of bill No. 4, we shall give the explanation of the striking difference in clause 7 of the two lists, supplied by Mr. Ewart, the legal representative of the Manitoba Roman Catholics.

"Attention is called to paragraph 7 in list No. 4 : "That the schools be separate." There is no reference to schools in list No. 3. Hence the dispute, Did, or did not, the provisional government demand that the schools should be separate ? On the one hand is produced what is said to be "the official copy, found in the papers of Thomas Bunn (now deceased) secretary of Riel's government." This is identical with list No. 3. Mr. Begg, in his history, gives this list No. 3 as the true one, and accompanies it with a copy of the instructions given to the delegates. That such a list is among Mr. Bunn's papers is sufficient to show that it had actual existence. It is no evidence, of course, that it was not superseded (as already two others had been superseded) ; and Mr. Begg, although careful and trustworthy, may have been misled through not having heard of a subsequent list.

"The best and only direct evidence that has been adduced upon the subject, is the sworn testimony of the Rev. Mr. Ritchot (himself one of the delegates), who was called as a witness when Lepine was being tried for the murder of Scott (1874), and when no one could have had any object in misstating the facts. At that trial Mr. Ritchot produced list No. 4, and swore that it was the list given to him as a delegate.

"Other evidence, and of very strong character, may be added : After much consultation with Sir John A. Macdonald and Sir George Cartier, on the one hand, and the Rev. Mr. Ritchot and Judge Black on the other, a draft bill was submitted to the delegates as that which the government was prepared to concede. The Rev. Mr. Ritchot made observations in writing upon all the clauses in the draft and sent them to the ministers. Section 19 of the draft dealt with the schools, and the following are the observations made upon it by Mr. Ritchot :

"'Cette clause etant la meme que celle de l'Acte de l'Amerique Britannique du Nord, confere, je l'interprette ainsi, comme principe fundamental, le privilege des ecoles separees dans toute la plentitude et, en cela, est conforme a l'article 7 de nos instructions."

(This clause being the same as the British North America Act, confers, so I interpret it, as fundamental principle, the privilege of separate schools to the fullest extent, and in that is in conformity with article 7 of our instructions.)

"Internal evidence, too, is not wanting in support of Mr. Ritchot's statement. Paragraph 1 of list No. 4 demands a senate for the new province, and a senate was granted, although the expense of it was much objected to. List No. 3 says nothing about a senate. Again, list No. 4 (paragraph 7) demands "that the schools be separate," and clauses were inserted to that end in the Manitoba Act. List No. 3 says nothing about schools. It would be strange if both these points could have got, by chance, into the Manitoba Act—an act which, as we shall soon see, was the result of elaborate negotiations with the delegates. It may be added that list No. 3 asks that the province shall be "styled and known as the province of 'Assiniboia.'" List No. 4 suggests no name. It is inconceivable that the Dominion should have deliberately refused to adopt the name Assiniboia had it been asked, for the Dominion has since then called a large part of the Territories by that very name.

"Comparison of the lists will show that No. 3 was probably the draft and No. 4 the finally revised form of the list of rights. Observe that while No. 4 often adopts the language of No. 3, it varies from it, not only in the important respects already referred to, but frequently in mere verbal expression. Judge Fournier, of the Supreme Court, in his recent judgment, adopts No. 4 as the true list."

Mr. Ewart goes on to argue that there can be no doubt that it was a list of the provisional government and not that of the Council of Forty, which was the basis of negotiations at Ottawa.

No one, so far as we are aware, has ever contended that Bill of Rights No. 2 (that formulated by the Council of Forty) was the basis of negotiations, although the list No. 2 undoubtedly embodied the demands of the people. Mr. Ewart's only conceivable object in thus stating facts which nobody has thought of contradicting, would seem to be to impart to the somewhat flimsy and far-fetched argument, and rather dubious facts, which he has mixed up with the undisputed ones, an air of soundness and respectability, which he must feel they sadly lack, standing alone.

Regarding "the official copy found in the papers of Thomas Bunn (now deceased), secretary of Riel's government," there is not the slightest doubt about its authenticity, as Mr. Ewart admits. Indeed, there is the best reason to believe that this document is the original Bill of Rights formulated by the provisional government, of which, be it observed, Mr. Bunn was the secretary. There is very little wonder that "Mr. Begg (who published his book in 1875) should give this bill (No. 3) as the true one," because he never knew nor had cause to suspect that any later bill existed.

Mr. Ewart is forced to admit that this Bill of Rights No. 3 had an existence, but he says there "is no evidence that it was not superseded (as already two others had been superseded), and Mr. Begg, although careful and trustworthy, may have been misled through not having seen a subsequent list."

This is an absurd and most disingenuous argument; so much so indeed, as to suggest that Mr. Ewart felt this phase of his case to be a very unsatisfactory one. In the first place, there is no analogy between the abandonment of the first two Bills of Rights, and the assumed abandonment of the third. Mr. Ewart himself supplies reasons for the abandonment of Bills No. 1 and 2, but he does not, and cannot, supply any reason

for the abandonment of Bill of Rights No. 3. Under the circumstances, the onus is not on believers in Bill No. 3, to show that it was not "superseded," but on Mr. Ewart's clients to show that it was. Mr. Ewart adroitly endeavors to shift the onus. Whilst not under obligation, by the rules of argument, to do so, the opponents of separate schools may safely undertake to prove that No. 3 was not "superseded."

Now, the Bill of Rights No. 3, found amongst Mr. Bunn's papers, was dated March 23rd, 1870, or the very day the delegates left for Ottawa. They had evidently been awaiting the completion of the list, and started immediately thereafter. How could this list have been "superseded" and the substituted list still be presented at Ottawa by the delegates, who left on the day the supposedly "superseded" one had been completed? Why should it have been "superseded" by the Provisional Government, none of of whose members did at any time express the slightest concern about separate schools?

Powerful evidence (although not the most conclusive that will be produced) that the bill was not "superseded," is presented by the fact that the Provisional Government on the day the delegates left, printed in French, and circulated amongst the French speaking people a copy of the instructions given to the delegates, and of Bill of Rights No. 3, as the list of the demands which were being made by the delegates on behalf of the Provisional Government and the people of the Northwest. Is it credible that this body would have circulated as as official document, a list of rights which had been "superseded," whilst saying not one word about the substitute? Printed copies of the bill, published by the Riel government, are in existence, and are in possession of the Librarian of the Province of Manitoba, as is also the original document found amongst the papers of Mr. Bunn.

No wonder, indeed, that Mr. Begg (not "*although* careful and trustworthy," but *because* "careful and trustworthy") gives list No. 3 as the true one.

But Mr. Ewart says he "may have been misled through not having heard of a subsequent list." How could he have heard of a subsequent list, when no member of the public, or of any government or legislature of Manitoba, knew of the existence of such a list, till December 27th, 1889, when the late Archbishop Tache referred to it in a letter to the Free Press of Winnipeg.

Mr. Ewart says: "the best and only direct evidence * * * is the sworn testimony of Rev. Mr. Ritchot, etc.,"

Mr. Ritchot's part of this most mysterious episode, has yet to be explained. He must know a great deal more than he has ever told the public, and he has some inexorable facts to confront, which, as we shall see, require a deal of explanation, and that from him. Mr. Ewart says that at the trial of Lepine, Rev. Mr. Ritchot produced list No. 4, and swore it was the list given to him as a delegate.

Now it is a very remarkable fact that the document which Mr. Ritchot did produce at Lepine trial is not anywhere to be found. It is not on file with the papers in the case. It has been lost or stolen from the records of the court. This is a most unfortunate, as well as mysterious and suggestive circumstance. If the document which Father Ritchot

produced at the trial could be produced now, it would afford a solution of the mystery. If it turned out to be Bill No. 4; if it were, like Bill No. 3, in the handwriting of Mr. Bunn, the secretary of the provisional government; if it were signed by the president and Mr. Bunn; then this very disagreeable and very disquieting mystery would be unravelled. But if that document should have turned out to be Bill No 3; or, if Bill No. 4, if it had turned out not to be a document written or signed by the provisional government officers, but a mere copy which might have been made up anywhere, and at any time, it would have been very unpleasant for certain parties. But that document is *non est.* Whither it has disappeared, and who or what was the cause of its disappearance, nobody knows, at least nobody who cares to tell.

Mr. Ewart argues that no one could have any object in misstating the facts at the Lepine trial. This is an altogether too sweeping assumption. If any person had had any object in substituting a spurious Bill of Rights for that which the provisional government drew up, the same reason would obviously have existed at the time of Lepine's trial, for keeping up the deception.

Mr. Ewart draws attention to the fact that Sir John A. Macdonald and Sir George Cartier submitted to Messrs. Ritchot and Black, a draft bill containing a clause regarding education, identical with the British North America Act clause, on which Mr. Ritchot made written comments. Mr. Ewart regards this as evidence "of very strong character." We consider it to be, on the contrary, extremely flimsy, and shall a little later furnish our reasons for so thinking. When, and under what circumstances was the notation made by Rev. Mr. Ritchot? These particulars are obviously of the highest importance, yet Mr. Ewart throws no light upon the time or place. Equally flimsy is the "internal evidence" which Mr. Ewart adduces. The fact that paragraph 1 of list No. 4 demands a senate, and that a senate was granted, is quite frivolous, when used as an argument to prove that Bill of Rights No. 4 was that given to the delegates. Item 1 of list No. 3 is more general in its terms, "but all rights and privileges common to the different provinces of the Dominion," might be presumed to cover this, as all the provinces in the Dominion then had, with the exception of Ontario, a senate or upper chamber. It is also argued by Mr. Ewart that the fact that the name of "Assiniboia," stated in item 1 of Bill 3. was not adopted is evidence that No. 4 was the true bill. He says "it is inconceivable that the Dominion should have deliberately refused to adopt the name 'Assiniboia' had it been asked." Why is it inconceivable? The fact that another portion of the territories was subsequently called Assiniboia, instead of making it "inconceivable," why that name should not have been given to Manitoba, rather suggests a reason for the refusal, if any such refusal had been made. But there is no evidence that there was any refusal at all, much less a "deliberate" refusal. The question was, for reasons which we shall presently see, probably considered of no importance by the delegates. If there was any general desire in Red River for the name of "Assiniboia," the delegates certainly knew of its existence. Now let us assume that Bill No. 4 was the basis of negotiations at Ottawa. When the question of the name of the province came up, the delegates would certainly state the feeling of the people on the point. In that case

the "inconceivable" must have happened, because, as we know, the province was not called Assiniboia but Manitoba.

But Mr. Ewart's method of argument suggests that he had adopted the ethics of a certain much-abused order of his clients' church. He must have known that there was a very easy explanation for any variations in regard to such trifling matters as the senate and the name of the province. He knew very well that the delegates had full authority to modify the demands of the Bill of Rights in these respects, and that in such matters their discretion was absolute.

In a letter of instructions, written by Mr. Bunn as secretary of state, of the provisional government, addressed to Judge Black, which was given to the delegates with the Bill of Rights, on their departure for Ottawa, the following passage occurs:

"You will please observe that with regard to articles (in Bill of Rights) numbered 1, 2, 3, 4, 5, 6, 7, 15, 19 and 20, you are left at liberty, in concert with your fellow commissioners, to exercise your discretion, but bear in mind that as you carry with you the full confidence of this people, it is expected that in the exercise of this liberty, you will do your utmost to secure their rights and privileges, which have hitherto been ignored. With reference to the remaining articles, I am directed to inform you that they are peremptory."

Why Mr. Ewart left out this, whilst embodying in his book almost every other scrap of written matter, however unnecessary, we do not understand. But these instructions make it quite clear that the arrangements as to senate and change of name of the province were quite within the discretionary power of the delegates to modify, and they therefore destroy Mr. Ewart's argument on that line. In Bill No. 4, some of the articles which are left, in the letter of instructions, to the discretion of the delegates, are made very specific, whilst in No. 3 they are more general in their terms. It is more in the line of probability, that matters which were subject to modification would be stated in general terms, than that minute particularization would be given. In fact, instead of Mr. Ewart's "internal evidence" proving that Bill No. 4 was the basis of the Manitoba Act, it is calculated to suggest the suspicion that Bill of Rights No. 4 was compiled after the Manitoba Act had been passed, and that the variations on Bill No. 3 had been made with the provisions of the Act in full view of the author of No. 4.

Mr. Ewart says: "List No. 4 (paragraph 7) demands that the schools shall be separate, and clauses were inserted to that end in the Manitoba Act. List No. 3 says nothing about schools."

"No Provision for Separate Schools in the Manitoba Act.

If Mr. Ewart means by the somewhat equivocal expression, "clauses to that end," to say that separate schools are provided for in the Manitoba Act, all we can say is, that the most careful reader would fail to discover any such provision, as did the judges of the highest tribunal in the empire. The Manitoba Act, like the British North America Act, contains only one section relating to education. It will now be convenient to give these sections of both acts in parallel:

BRITISH NORTH AMERICA ACT.	MANITOBA ACT.
93. In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions :	22. In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions :
(1). Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any classes of persons have by law in the province at the union.	(1). Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law *or practice* in the province at the union.
(2). *All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.*	
(3). *Where in any province a system of separate or dissentient schools exists by law at the union, or is therefore established by the legislature of the province* an appeal shall lie to the Governor-General-in-Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.	(2). An appeal shall lie to the Governor-General-in-Council from any act or decision *of the legislature of the province*, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.
(4). In case any such provincial law as from time to time seems to the Governor-General-in-Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General-in-Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and so far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor-General-in-Council under this section.	(3). In case any such provincial law as from time to time seems to the Governor-General-in-Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General-in-Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General-in-Council under this section.

It will be seen that the general provisions of the B. N. A. Act in regard to education are incorporated in the Manitoba Act. There is nothing in this which might not have readily been embodied in the Manitoba Act (which as far as it possibly could be made to do so, followed the general lines and employed the language of the B. N. A. Act) without any special stipulation on the part of the delegates. If it had been intended to adopt the extraordinary policy of providing for a permanent system of separate schools, what more easy than to do so in express terms, as is done by sub-section 2 of section 93 of the B. N. A. Act, quoted above, in the case of Ontario and Quebec ? But while, despite Mr. Ewart's assertion to the contrary, no provision is made in the Manitoba Act for separate schools, as demanded by article 7 of Bill of Rights No. 4, the remarkable fact remains that the provision for the annual payment of 80 cents per head by the Dominion to the province, called for by article 7 of bill No. 3 is actually embodied in the Manitoba Act. The significance of this lies in the fact that no provision for the payment of such a subsidy by the Dominion appears in list No. 4. It is likely that the provisional government, in

"superseding" No 3, should leave out altogether an item which was of such essential importance to the province as the subsidy clause ?

Bill of Rights No. 4 is Spurious.

Much more could be said to refute and rebut Mr. Ewart's arguments and evidence in favor of the authenticity of Bill of Rights No. 4. Now we shall recapitulate the facts to which we have already referred, which go to show that Bill of Rights No. 4 is not the document which was given by the provisional government to the delegates and shall present an additional one.

In the first place there is no knowledge on the part of the public of the existence of such a bill till Archbishop Tache gave it in an incomplete form, (it then contained only 19 clauses) in the Free Press newspaper on December 27, 1889, nearly twenty years after the original document was written.

The only official record in existence of any list of rights proposed by the provisional government is the original copy found in the papers of Mr. Bunn, which has already been alluded to. That list is Bill of Rights No. 3. Mr. Bunn was one of the chief officers of the provisional government, and its secretary. He apparently transacted all the clerical work connected with the Bill of Rights, yet no trace of the existence of any other list can be found amongst his documents, and no hint of the existence of any other or later list is obtained from his correspondence.

The original Bill of Rights No. 3 found in Mr. Bunn's papers, is dated March 23, 1870, the day on which the delegates departed for Ottawa. It would have been absolutely impossible to have "superseded" this bill and substituted a new one, which could have been taken by these delegates.

On the same date (March 23) the provisional government issued for publication a copy of the instructions given the delegates, printed in the French language. This manifesto contains a copy of Bill No. 3, and declares that it contains the demands of the provisional government on the Dominion.

Mr. Begg, whom Mr. Ewart characterizes as a "careful and trustworthy" historian, in his clear, fair and circumstantial account of the Red River troubles, gives bill No. 3, as the bill framed by the provisional government, and although probably better informed, as a result of long residence and intelligent research, in regard to the affairs of the territory, than any other man, he seems never to have heard of the existence of any other list than bill No. 3.

But the strongest evidence of the fraudulent character of bill No. 4, and of the authenticity of No. 3, is yet to be given.

Whilst the Red River troubles were running their course, the Governor-General of Canada, Sir John Young, (afterwards Lord Lisgar) was in constant communication with the Imperial government. Besides giving an account of the occurrences, he transmitted all documents bearing on the matter. These letters and documents were printed and issued in book form, by the Colonial Office of the British government, under the title "Correspondence relative to the recent disturbances in the Red River "Settlement." This correspondence forms part of the archives of the

British government. A copy of the book is also in the possession of the provincial librarian of Manitoba.

Amongst this mass of correspondence and documents is a letter from the Governor-General to Earl Granville, then Colonial Secretary, dated April 29, 1870, containing information as to the arrest of the delegates, who had been arrested on their arrival in Ontario, as accomplices or accessories in the murder of Thomas Scott. In a postscript the Governor-General says: "I think it right to forward to Your Lordship a copy of the terms and conditions brought by the delegates of the Northwest which have formed the subject of conference." Then follows a copy of the Bill of Rights, which was thus transmitted to Lord Granville. Was it Bill of Rights No. 4, which Father Ritchot says he took to Ottawa, and which he says formed the subject of conference? Not at all. It is a true and exact copy of Bill of Rights No. 3! Now this letter containing this copy of No. 3, was written by the Governor-General on April 29, while the delegates were in Ottawa, and in conference with the Dominion government. How did the Governor-General come into possession of this "superseded" bill? He must have got it from the delegates, and undoubtedly Father Ritchot was the delegate who presented the bill to the Dominion authorities, because, as Mr. Ewart points out, he was the "gentleman who took the leading part in the negotiations."

Now the onus is on Father Ritchot to explain how Sir John Young came to send Bill of Rights No. 3 to England as a copy of "the terms and conditions brought by the delegates of the Northwest," while he (Father Ritchot) at the trial of Lepine "produced list No. 4, and swore that it was the list given to him as a delegate."

There can be no doubt in the mind of any man who reads the facts recited, bearing on these Bills of Rights (and they are facts which cannot be questioned), that there was a deliberately conceived plan on the part of some person or persons to deceive and mislead the Ottawa authorities, and to misrepresent the provisional government and the settlers of the Northwest. In view of the fact that Father Ritchot was, according to Mr. Ewart, the delegate "who took the leading part in the negotiations" at Ottawa; in view of the fact that he must have transmitted to Sir John Young, Bill No. 3, as containing "the terms and conditions brought by the delegates of the Northwest;" in view of the fact that he is said by Mr. Ewart to have, as a witness at the trial of Lepine, "produced list No. 4 and swore that it was the list given to him as a delegate;" in view of these and other facts, which conclusively show that List No. 4 was not the list given to him as a delegate—much explanation is, as we have already pointed out, due from Rev. Mr. Ritchot.

It is an unfortunate fact, that the official record of the existence of the letter of Sir John Young to Earl Granville, and of the copy of Bill No. 3 enclosed therein, was not known at the time the Roman Catholic Appeal was argued before the Imperial Privy Council.

Proof of Authenticity of List No. 4 Necessary to Roman Catholic Case.

Frequent reference has been made to Mr. Ewart's publication, "The Manitoba School Question." We have made some observations on Mr. Ewart's strained interpretations of certain facts, and his entire omission of certain others. It should be stated, however, that this book, or rather compilation, of Mr. Ewart's is not a history of the case, from an impartial standpoint, and Mr. Ewart does not give it forth to the public as such. Mr. Ewart is the legal representative of the Manitoba Roman Catholics, and his book is, in great part, a collection of the documents and evidence supporting the Roman Catholic contentions before the courts. It is, in fact, his brief. It is well therefore to make the explanation that Mr. Ewart is, in his book, an advocate and not a historian.

He devotes about sixty pages of closely printed matter to extracts, quotations and statements, describing the troubles and events which led up to the dispatch of the delegates to Ottawa with the Bill of Rights. If this was not done for the purpose of establishing the authenticity of Bill No. 4, then the object is inconceivable. For, as we have already pointed out, there is nothing at all in the nature of the agitation, nor in the character of the events themselves, to show that separate schools, or any other kind of schools, were ever an issue in the strifes and tumults of the time. The sole and whole cause of trouble was the anxiety of the settlers as to the security of their properties and liberties.

Yet, after having with so much elaboration, dwelt on the facts bearing on these agrarian disturbances, Mr. Ewart goes on: "Enough has been said about these different Lists of Rights. The importance of the controversy is not, to the mind of the present writer, very great."

This seems to be a most extraordinary attitude for the legal representative of the separate school party to take. It is true that even the demonstrated genuineness of Bill of Rights No. 4 would not have been a matter of essential importance to the Province of Manitoba, because, as we see, the foundation of its case was laid on principles so broad and deep, that it would not be effected by either the demonstrated authenticity or spuriousness of Bill of Rights No. 4.

But to the separate school advocates, the authenticity of No. 4 is of paramount importance, because they must base their claims, not on the inherent political, economical or ethical soundness of the claims themselves but purely on their vested right to peculiar privileges. Even if they have proof that these peculiar privileges were legitimately obtained, and confirmed by legislation, we maintain and shall endeavor to demonstrate, that they are not entitled to the continued enjoyment of these privileges, unless they can show that their continued enjoyment of them is consistent with sound ethical and political principles. Without such proof their case simply falls to pieces.

Mr. Ewart argues: "The delegates asked for several things, which, by the Manitoba Act were not accorded. Suppose, then, that separate schools and other things not demanded were nevertheless made part of the Act;

the effect of this, so far as the settlers are concerned, is that the offer of the settlers (taking the offer as a whole) is rejected by Canada, and Canada, by her Manitoba Act, makes a counter proposition, which counter proposition is accepted by the settlers. * * * * Whether, therefore, the settlers asked for separate schools, or the idea came from Canada, makes no difference as to the result. In either case the Manitoba Act was a treaty.

With a *naivete* which is amusing and almost astounding, Mr. Ewart goes on : "Whether list No. 4 is authentic or not, it is clear that it was the one used by the Rev. Mr. Ritchot ; that it was that gentleman who took the leading part in the negotiations, and that the idea of separate schools came from clause 7 of list No. 4. Canada thought at all events that separate schools had been demanded, acceded to that demand, and the provisional assembly agreed to it, as shall presently appear."

The standards of political ethics and the doctrines of government involved in this line of argument, are obviously of the most extraordinary character. Let us analyse the meaning and consider the nature of this argument.

Before doing so it may be well just here to draw attention to the dramatic or rather theatrical accessories which are employed to eke out a case, which is certainly in much need of all the extraneous aid which may be obtained. Mr. Ewart in his capacity as lawyer has professionally "bowed his head" and "felt the shame" which has been brought upon him by the perfidy of his whilom fellow-partisans, and his heretical co-religionists. For, strange as it may appear, Mr. Ewart is a Protestant. He pathetically and with inferential regret, assures the judges, "in that faith was I born and nurtured." Now, it is exasperating to think that Mr. Ewart's super-sensitive and hyper-conscientious soul should have been so wrung by shame and anguish, quite unnecessarily. The perfidy of the Protestants of Manitoba which has caused Mr. Ewart so much affliction (and incidentally brought him a fat case) is entirely a creature of his per-fervid imagination, which, by the way, seems to be of the most inestimable service to that gentleman, at these critical and trying junctures, when commonplace fact fails to afford comfort or support. Mr. Ewart has a whole chapter on "Protestant promises" which on examination is found to have absolutely no bearing on the subject on which he is professedly writing. There is absolutely no promise made by any body of Protestants or of Manitobans, or by any body with any authority to make promises on their behalf, which have been broken.

The writer is inclined to think that Mr. Ewart will not serve the cause of his clients by offering wanton, unmerited and gratuitous insult to a large body of people whose desire is simply to do what is absolutely fair and just.

Mr. Ewart indulges in much fine moral indignation at the spectacle of the meek and unfortunate Roman Catholic ecclesiastics being ruthlessly deprived of their "vested rights" by a dishonest and unscrupulous majority. But here we have him, when he is forced into an argument on the ethical origin of these "vested rights" taking the ground that it does not matter by what means these rights were originally acquired, "whether list No. 4 is authentic or not it is the one used by Father Ritchot." If it

was not authentic, Father Ritchot must have perpetrated or been a party to a fraud both on the Ottawa and Red River people, which his clients now wish to take advantage of. Yet that makes no difference. Ethical tests must not be applied in an enquiry as to the origin of the "vested rights." No matter how glaringly and how dangerously inconsistent and unfair these "rights" may be in themselves, or how they may have been acquired, their entire reasonableness and justice is to be assumed and from this starting point only, ethical tests may be applied in the discussion.

The question now arises: How did it happen that these separate state schools were asked for, who wanted them, and who were benefited by their being granted? It must be apparent to every reader, who has has followed the course of the recital, that the Red River settlers did not want them, and had apparently never thought of them, possibly had never heard of them, and certainly did not ask for them. It is also reasonably certain that the Canadian government would not go wantonly out of its way to suggest them. In looking for the source of this demand, we are compelled to turn our attention to that ecclesiastical organization, of which Father Ritchot is a priest. How interesting, indeed, it would be to know just when and under what circumstances the idea of a Bill of Rights No. 4 was first conceived.

First Manitoba Legislature.

The Manitoba Act went into effect and Manitoba became a province of the Dominion on July 15, 1870. A legislature was elected, and in May, 1871 it passed an "Act to establish a system of education in the province."

The provincial education act of 1871 provided for a system of separate schools. There were two superintendents of education and two sets of schools. The legislative grant was to be divided equally, and handed over to the respective boards. In a summary of the subsequent school legislation of the province, Judge Dubuc says: "The most notable change in the system was that the denominational distinction between the Catholics and Protestants became more and more pronounced under the different statutes afterwards passed."

The law of 1871 operated with some unessential modifications, till 1890, when the now celebrated acts abolishing separate schools, were introduced by Mr. Martin, and passed in the legislature by an overwhelming majority.

Before going on to describe the course of the litigation and the discussion which has resulted from the passage of these acts, it would be well to consider the nature of the doctrines, political and otherwise, involved in the contention of the separate schools party.

It has been said by the separate schools counsel that the settlers made a proposition to Canada which Canada did not accept, but that Canada made a counter-proposition which was embodied in the Manitoba act. The act was accepted by the settlers, and thereby became a treaty. Now, we have seen just what sort of "treaty" the Manitoba act is, but we shall assume it to have been a treaty in the legitimate meaning of the term. The argument referred to has not been carried to its inevitable conclusion, which is that the Manitoba act being a treaty, it provisions are binding on Manitoba for all time. This is the clearly intended inference,

The Irrevocable Legislation Theory.

It will be remembered that the settlers really expressed no desire for separate schools. The Roman Catholic church, however, was apparently very anxious that separate schools should be provided for. The protection for separate schools was, therefore, a "right and privilege" granted to the Catholic church.

Now we have seen that the legal counsel of the Catholics does not consider it a matter of essential importance whether separate schools were asked for or not. To the opponents of separate schools it is a matter of still less imporance, but the reasons for indifference are widely apart in the two cases. The Catholic church contends that separate schools having, by hook or crook, once been provided for, must be perpetually maintained. The British government would not permit of the assumption of control by Canada, over the Northwest, unless the settlers were satisfied and their rights respected. Let us, however, carefully ascertain what those rights were. As occupants of the soil, they had undoubtedly the well recognized squatter right to possession of their individual properties. They were also entitled to a control of their own local government and a voice in the general government. These things they asked for. Their individual rights to the secure possession of their properties, and their collective right to their own local government are indisputable. But the proposition that they had any right to dictate and to fix irrevocably, legislation in regard to any matter which should govern for all time all generations living in the territory, would be monstrous, if it were not ridiculous. Moreover they never claimed, and never contemplated exercising any such right.

Yet the contention of the separate school party of a necessity implies the soundness and the reasonableness of this proposition. That indeed is their whole ground. That ground taken away, they have nothing to stand upon.

As we have seen, the population of the Northwest before the union with Canada was 12,000. Of these, 10,000 were half-breeds. It is beyond doubt that there were several highly intelligent men in the community. The clergy of the various denominations, the Hudson's Bay Co.'s officers, and such men as Mr. Bunn and Mr. Bannatyne and others, were men fitted to comport themselves with credit in any society. But the overwhelming mass were of an order of intelligence which induced Lord Wolseley to refer to them as "an ignorant and impressionable people."

Now, as we have repeatedly pointed out, there was never any evidence of a desire on the part of either the enlightened few or the "ignorant and impressionable" ten thousand, for separate schools. But even had there been such a desire, and had it found expression and been complied with, is it not a monstrous proposition, to assert, in these days of democratic government and the rule of the majority, that this handful of people, mostly quite unlettered, could acquire the right to dictate under what conditions all the succeeding generations of people who might live in these lands, should govern themselves? Yet this is the theory of "vested right" which we are gravely asked to accept as a sound and reasonable one.

The inherent monstrosity and absurdity of this doctrine are attempted to be justified by the argument that it is involved in the constitution. If that were the case it would not make the doctrine, or the practice, any more just or sensible. It would only prove that the constitution was in want of speedy amendment. But fortunately there is not the slightest ground for believing that this monstrosity has been embodied in the constitution. We shall come to that aspect of the question later, however.

It is possible that under the conditions existing in 1871, and on account of the attitude of the Catholic church, separate schools were the only practicable system, and it is certain that the legislature instituted such a system. The population was then 12,000, mostly half-breeds, "ignorant and impressionable." The population is now over 200,000, of a high average degree of intelligence, to the vast majority of whom separate schools are not only inconvenient, but distasteful. Yet it is contended that because the representatives of the few thousand primitive people in 1871 enacted legislation which suited their circumstances, that legislation must remain irrevocable and unalterable and must be accepted by the present 200,000, no matter how unsuitable their circumstances or intelligence, and shall still remain irrevocable and unalterable, when the 200,000 shall have become 2,000,000. This, it seems to us, is about as nearly the *reductio ad absurdum* of the wooden and unreasoning apotheosis of "constitutionalism" of which we have had occasion to observe so much recently, as it is possible to come. The "constitutional" controversialists assume some provision as being created by the constitution, and then, quite regardless of the inherent iniquity or absurdity of the provision, they gravely argue for its unalterable character solely because it is in the constitution.

Now, when a man owns property in his own right, he can bequeath it, or it becomes the property of his heir. But here is claimed for these Red River settlers (they never claimed it for themselves) a vested interest in the educational legislation of the province of Manitoba for all time.

If these settlers had, on the ground of their squatter-right claims as occupants of the country, asked for separate schools, or for immunity from any tax for public schools, this immunity, if it had been conceded on that ground, would have applied to them only during their lives and possibly to their children born before the union. That is all they could have claimed at the utmost.

These poor natives have nearly all gone from the land (let us hope to that peaceful country, where there are no land-grabbing speculators, no wire-pulling politicians, and no intriguing ecclesiastics). So also have nearly all their descendants. But their "vested rights" in the educational legislation of the province still live. Who are the present possessors, and how did they come by these rights? Have they any traceable connection or relationship with the original owners? Have they acquired these vested rights by bequest or legal inheritance? No. They have acquired them simply because they are Roman Catholics, and because, they say, as Roman Catholics they are entitled to these rights and privileges by virtue of the "constitution."

Let us clearly bear in mind that no other denomination is entitled to such rights or privileges. According to the highest tribunal in the realm, no one of any of the Protestant denominations can claim any such privi-

leges. Neither could a Jew, nor a Unitarian. Here, then, is a discrimination in favor of one particular religious denomination, the practical effect of which would be (if it were admitted) to give state aid to the Roman Catholic church. This would be a distinct infraction of one of the essential doctrines of our system of government—the entire separation of church and state.

This theory of legislation which is irrevocable by the body which enacted it, is as unique as it is monstrous. There is probably not another case in history in which such a contention has been made. If the principle which it involves, namely, that what is, must continue to be, had been always accepted, none of the great movements, by which mankind have achieved the measure of freedom they now possess, could have been inaugurated. How many instances come up in which privileges enjoyed by classes or individuals have been swept away by the force of popular indignation, prompted by the popular sense of justice, because the privileges, while enjoyed under the protection of existing laws, were inherently unjust and inequitable? The tremendous privileges of the landed class in England received a staggering blow when the Corn Law Repeal Act was passed. The clergy of the Anglican Church in Ireland were stripped of all their privileges and endowments, which they had possessed and enjoyed by the sanction of the law, simply because the sense of justice of the members of the British Parliament forced them to declare that although these privileges were "vested rights," they were in reality unjustifiable on ethical grounds. The slave power was abolished in the United States in the same way. In Canada the Clergy Reserves question is another case in point.

In all these cases the stock shibboleths of robbery, persecution, "vested rights," and so forth, were made use of, just as they are now being made use of in this Manitoba School Question. But the great tribunal of public opinion has pronounced the acts specified to be wise and just and commendable. There is no doubt that the action of Manitoba will receive the same endorsement and approval.

The Legal and Constitutional Questions.

Having dealt with the general considerations and with the historical facts relating to this Manitoba school question, we have now to consider the legal and constitutional position of the parties. It is in this direction that the Roman Catholics must look for their support and success, as we think it is tolerably clear that neither sound political doctrine nor historical fact would justify their claims.

The Manitoba legislation of 1890 abolished denominational state schools.

Although the population of the province embraces persons of many and greatly divergent creeds, no individual or class of the community so far as we know, has raised any serious objections to the educational system, with which that legislation replaced the archaic and inefficient system

which had been in operation previously, except the Roman Catholics. The nature and origin of their objections to the system are now well known and have been already dealt with. We have also pointed out the importance of the questions and issues which are involved in the attitude and demands of the Roman Catholic party. It is now intended to consider the legal position of the question.

The Roman Catholics, or rather the Roman Catholic hierarchy (for it is really the source of hostility to the present educational system,) took up the work of destroying the system of public schools in a methodical way, consistently with the policy adopted by them in the cases of the provinces of New Brunswick and Prince Edward Island. Each of these provinces established a public school system subsequently to confederation, and in each case was a determined and persistent effort made by the Roman hierarchy to overturn the system. In both cases, however, the attempts were unsuccessful, but the provinces only secured the final victory after much waste of money on litigation, and much loss caused through the inability of the legislatures to attend to other questions of importance, while this absorbing question was *en tapis*.

First Step in the Litigation.

The first movement in the Roman Catholic attack on the Manitoba public school act of 1890 was in the shape of an application made to the Manitoba courts by J. K. Barrett, a Roman Catholic taxpayer, to have quashed a by-law of the city of Winnipeg, fixing a rate of taxation for the support of the public schools. This by-law had been enacted by the Winnipeg city council, in terms of the new education laws which had just been passed by the legislature.

Mr. Barret's application was based on the first sub-section of section 22 of the Manitoba Act, which section, with its sub-section has already been given in these pages. He contended that Roman Catholics, by virtue of the sub-section in question, were entitled to exemption from taxation for the support of any other than Roman Catholic schools, and that, therefore, the act which imposed on them taxation for the support of public schools was *ultra vires* of the provincial legislature, and consequently ineffective. Justice Killam, who heard the application, dismissed the summons. He held that no right or privilege, which the Roman Catholics possessed at the time of the union had been prejudiced or affected by the legislation in question. This judgment was appealed against, but the full court of the province sustained Judge Killam's decision by a majority of 2 to 1, the dissenting judge, Mr. Justice Dubuc, holding that the legislation was *ultra vires*.

An appeal was carried by the Roman Catholic party to Ottawa, where the judgment of the Manitoba court was reversed by the unanimous judgment of the Supreme Court of Canada.

There is neither space nor motive here to reproduce the deliverances of the various Supreme Court judges, who rendered judgments, but a perusal of the judgments of at least two of these distinguished jurists would be interesting as showing the effect on the mind of legal training, in the direction of rendering it prone to seek for ingeniously intricate and complex solutions, for problems whose actual solution is very simple.

The province of Manitoba, in turn appealed against the judgment of the Supreme Court of Canada, and the case went to England, where it was argued at great length before the Judicial Committee of the Privy Council. This tribunal of last resort allowed the appeal, reversed the judgment of the Supreme Court of Canada, and restored the judgment of the Manitoba Court, thereby affirming the constitutionality and validity of the Manitoba legislation, and declaring that this legislation had not affected any rights which any person, or class of persons, had at the union of Manitoba with the Dominion.

When it had become apparent, from the judgment of the Manitoba full court, which upheld that of Mr. Justice Killam, declaring the School Act of 1890 *intra vires*, that there was a possibility, and even a probability, of the validity of the act being ultimately sustained, the Separate School party at once began to work on their next line of attack. It will be seen that sub- section 2 of section 22 of the Manitoba Act, gives a right of appeal "to the Governor-in-Council against any act or decision of the legislature of the province or of any provincial authority affecting any right of privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." In terms of this provision, a petition was gotten up, signed by Archbishop Tache and over 4,000 Roman Catholics, in which the grievances of the petitioners were set out, and which asked for a declaration from His Excellency in Council that the rights of the Catholic minority had been prejudicially affected and also that provision be made for their relief.

Sir John Thompson, who was then Minister of Justice, decided that no appeal to the Governor-General-in-Council could be heard, till the Imperial Privy Council had given judgment in the Barrett case.

As soon as the decision of the Imperial tribunal (which as we have seen, was unfavorable to the separate school party) was rendered, a second petition was presented to the Governor-General-in-Council, praying for relief. This second petition was referred to a sub-committee of the Dominion cabinet. This body decided that, in so far as the petition asked the the Governor-General-in-Council to declare that the act of 1890 prejudicially affected rights and privileges held by the Catholic before the union, it could not be entertained, as the judicial committee had settled that point. With regard to the question as to whether the Governor-General-in-Council could hear the appeal, and in the event of his doing so, whether he should do anything in the way of affording relief under the provisions of sub-sections 2 and 3 of section 22 of the Manitoba Act, they thought this should be further argued, and advised that a date be fixed for that purpose. The suggestions of the sub-committee were adopted, and the case was argued on January 21st, 1893, before the Canadian Privy Council (nearly every member of the cabinet being present) by Mr. Ewart for the Roman Catholic petitioners. Manitoba was not represented.

After this argument the council decided, in order to clear up the unsettled points of law, that the case should be referred to the supreme court. This reference was made under the provisions of an act passed in 1891, by the Canadian parliament, the immediate object of which was to provide for the very contingency which had thus arisen.

The questions referred were as follows :

1. Is the appeal referred to in the said memorials and petitions and asserted thereby, such an appeal as is admissible by sub-section 3 of section 93 of the British North America Act, 1867, or by sub-section 2 of section 22 of the Manitoba Act, 33 Victoria (1870), chapter 3, Canada ?

2. Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the sub-sections above referred to, or either of them ?

3. Does the decision of the judicial committee of the Privy Council in the cases of Barrett vs. The City of Winnipeg, and Logan vs. The City of Winnipeg, dispose of, or conclude, the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them, after the union, under the statutes of the province have been interfered with by the statutes of 1890, complained of in the said petitions and memorials ?

4. Does sub-section 3 of section 93 of the British North America Act, 1867, apply to Manitoba ?

5. Has His Excellency the Governor-General-in-Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor-General-in-Council any other jurisdiction in the premises ?

6. Did the acts of Manitoba relating to education, passed prior to the session of 1890, confer on or continue to the minority, a "right or privilege in relation to education," within the meaning of sub-section 3 of section 93 of the British North America Act, 1867, if said section 93 be found to be applicable to Manitoba ; and, if so, did the two acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor-General-in-Council ?

By a majority of three to two the supreme court answered all these questions, with the exception of No. 3, in the negative, one of the majority, however, answering No. 3 also in the negative.

We have said that the judgment of this distinguished tribunal in the Barrett case furnishes curiously interesting reading. But, even more curious are the judgments in this reference. It is exceedingly interesting to observe the very different and very devious routes by which these learned judicial minds arrive at the same place.

The decision of the supreme court was, then, that an appeal of the Roman Catholic minority to the Governor-General-in-Council would not lie.

The Imperial Privy Council's Judgment.

The reference was then carried before the judicial committee of the Imperial Privy Council. A very elaborate and exhaustive argument of the case was made from both sides. The judicial committee again reversed the decision of the Canadian Supreme Court, thereby declaring that an appeal of the Roman Catholic minority to the Governor-General-in-Council would lie.

Much misunderstanding and much controversy has arisen as to the scope and meaning of this decision, and affecting, as it does, the interests

of the Roman Catholic hierarchy, it has a profound, and, to the non-partisan spectator, an even amusing, influence on Canadian party politics.

It is argued by the Separatist party that the last judgment of the Privy Council is not only a declaration that the Governor-General-in-Council may hear the appeal, but also an injunction as to how he must deal with it. The attempt is further made to create the impression that their lordship's judgment is an expression of their opinion on the moral merits of the case. Their lordships are probably the best authorities from whom to obtain reliable information as to the purport and scope of their judgment, and we shall see what they have said.

But first, it would be well to recall to our minds the exact issues which were before them. These are described in the questions referred to the Supreme Court of Canada, by the Canadian Privy Council, and which are given above verbatim. The negative answer of the Canadian Supreme Court to these questions was the immediate cause of the appeal to the Judicial Committee. By reference to these six questions it will be seen that the essential point to be determined was whether under sub-section 3 of section 93 of the B. N. A. Act, or sub-section 2 of section 22, of the the Manitoba Act, and in view of the facts and circumstances recited by the Roman Catholic petition, there was any right of appeal at all. The counsel for the Roman Catholics argued that the previous judgment of the Judicial Committee declaring the legislation *intra vires* and constitutional, did not affect the right of appeal to the Governor-General-in-Council. They argued, indeed, that this appeal, under sub-section 2 of section 22, of the Manitoba Act would only lie in case the legislation which affected the rights and privileges of the minority had been declared constitutional, as, if the legislation was shown to have infringed the provisions of sub-section 1, it would be *ultra vires*, and of no effect, and therefore no appeal against its provisions would be necessary.

The counsel for the province of Manitoba argued that the provincial legislation of 1890, having been ascertained to be strictly within the power of the legislature, no appeal against it could lie, as sub-sections 3 and 4 of the Manitoba Act merely enforced the first or substantive sub-section. The nature of the issue before the tribunal may be clearly shown by the following extract from the proceedings in the argument before the Judicial Committee:

The Lord Chancellor—It is not before us what should be declared, is it?

Mr. Blake—No, what is before your Lordships is whether there is a case for appeal?

The Lord Chancellor—What is before us is the functions of the Governor-General.

Mr. Blake—Yes, and not the methods in which he shall exercise them, not the discretion which he shall use, but whether a case has arisen on these facts on which he has jurisdiction to intervene. That is all that is before your Lordships."

Then there is another passage:

The Lord Chancellor—The question seems to me to be this: If you are right in saying that the abolition of a system of denominational education which was created by post union legislation, is within the 2nd

section of the Manitoba Act, and the 3rd section of the other, if it applies, then you say there is a case for the jurisdiction of the Governor-General, and that is all we have to decide.

Mr. Blake—That is all your Lordships have to decide. What remedy he shall propose to apply, is quite a difierent thing.

In their judgment their Lordships say: "The function of a tribunal is limited to construing the words employed: it is not justified in forcing into them a meaning which they cannot reasonably bear. Its duty is to interpret, not to enact." Further on their Lordships observe; "With the policy of these acts their Lordships are not concerned, nor with the reasons which led to their enactment. It may be that as the population of the province became more largely Protestant, it was found increasingly difficult, especially in sparsely settled districts, to work the system inaugurated in 1871, even with the modification introduced in later years. But whether this be so or not, is immaterial. The sole question to be determined is whether a right or privilege, which the Roman Catholic minority previously enjoyed, has been affected by the legislation of 1890. Their Lordships are unable to see how this question can receive any but an affirmative answer. Again their Lordships remark: "Mr. Justice Taschereau says that the legislation of 1890, having been irrevocably held to be *intra vires*, cannot have "illegally" affected any of the rights or privileges of the Catholic minority. But the word "illegally" has no place in the sub-section in question. The appeal is given if the rights are in fact affected.

Again: "Their Lordships have decided that the Governor-General has jurisdiction, and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute."

Two things are clear. Their Lordships were not required to, could not, and did not, impose any restraint on the Governor-General-in-Council in the exercise of his jurisdiction. Nor did they, nor could they, offer any opinion on the ethical bearing of the legislation in question. Their Lordships could not instruct nor advise the Governor-General how he should exercise his functions, because such instruction or advice was not asked for, and could not be given by them, and if given need not be attended to, as even the highest legal tribunal in the realm is limited in its decisions by the scope of the questions which are submitted to it. If it were otherwise the Judicial Committee would not be a judicial tribunal but a bureaucracy or rather "judocracy" somewhat similar to the Star Chamber of malodorous memory, an institution not quite in keeping with our ideas of government.

The Imperial Privy Council could not instruct the Governor-General-in-Council what decision he should give. The idea of an appeal to a tribunal whose decision and answer are necessarily a foregone conclusion, contains an element of the absurd. Let us see how it works out in this instance. The legislature has passed legislation, which has been declared by the highest authority to be valid and constitutional. But by the same constitution an appeal is provided to a political authority, against this legislation. The political authority (so the separatists allege), is bound to annul the legislation. The legislation, therefore, which, according to the

constitution, is valid, is, also according to the constitution, such legislation as must be made null and void. This see-saw process seems so puerile that the mere description of it appears to partake of silliness. Yet, in spite of their Lordships' statement of the scope of their decision, and in spite even of the definition of the issue by the counsel of the Roman Catholics themselves (Mr. Blake), we are told, in all seriousness, that the judgment of the Privy Council was literally an injunction to the Governor-General-in-Council to restore separate schools.

Functions of the Judicial Committee not Unlimited.

And this unwarranted interpretation of the judgment is persisted in, in face of the fact that the issuance of a mandate to the Governor-General-in-Council was entirely beyond the jurisdiction of the Judicial Committee. That tribunal had as much authority to instruct or advise the Governor-General-in-Council to order the restoration of separate schools, as it has to direct him to abandon the policy of protection. We shall, however, a little later see the reason for such an interpretation or rather misinterpretation of their Lordships' decision.

It has also been contended that, because their Lordships have decided that an appeal would lie, and that the rights and privileges of the Catholic minority have been affected, therefore the legislation which has affected these rights, is morally unsound and unjust, or at least that this is their Lordships' opinion. This also is an entirely unwarrantable contention. An opinion as to the moral merits was not, and could not, be asked for. We have seen their Lordships' own definition of their position. "The function of a tribunal is limited to construing the words employed." Had they been obliged to deal with the moral merits or the political ethics of the case, they would have required to begin with an examination of the nature of the "rights and privileges" themselves, with a view to ascertaining whether such rights and privileges had any moral claim to existence. It is obvious that the moral status of the legislation which abolished these rights, depends altogether on the question whether their existence could be defended on ethical grounds. If the rights were natural or common rights, the withdrawal of which would place the persons who had enjoyed them in a position of disadvantage as compared with any other sections of the community, then the legislature was morally wrong in abolishing them.

But is this the case ? The legislation of 1890 accords to no section of the community any privileges which are denied to any other section. The "rights and privileges" of which they were deprived were enjoyed by Cathlics to the exclusion of persons of every other sect or class in the community. All are now treated absolutely alike, and special provision is made for avoidance of offence to susceptibilities of every description. The Roman Catholics, however, say that these equal privileges are not enough for them, that their conscience impels them to demand more, and that fortunately for them, their conscience is re-inforced by a provision of the constitution.

What is their Lordships' Opinion ?

It is probably unfortunate that we could not have an expressly stated opinion on the broad, ethical and political issues involved, quite apart from

the techicnal legal questions, from a body of men so well qualified by their learning, their capacity, their integrity and independence, as this same judicial committee. Such an opinion, of course, could not be, and was not given, but some suggestions as to what it would have been, had it been permissible to state it, may be gathered from passages in the judgments. In the first judgment, their Lordships point out and correct a misapprehension to the effect that one of the effects of the legislation of 1890 was to confiscate Catholic property. They show that, on the contrary, the Catholics were placed, in regard to their school properties, in a better position than the rest of the community. Their Lordships proceed : "Notwithstanding the Public Schools Act of 1890, Roman Catholics, and members of every other body in Manitoba, are free to establish schools throughout the province ; they are free to maintain their schools by school fees or voluntary subscriptions ; they are free to conduct their schools according to their own religious tenets, without molestation or interference. No child is compelled to attend a public school. No special advantage other than the advantage of a free education in schools conducted under public management, is held out to those who do attend. But then, it is said that it is impossible for Roman Catholics, or for members of the Church of England (if their views are correctly represented by the Bishop of Rupert's Land, who has given evidence in the Logan case), to send their children to public schools, where the education is not superintended and directed by the authorities of their church, and that, therefore, Roman Catholics and members of the Church of England, who are taxed for public schools, and at the same time feel themselves compelled to support their own schools, are in a less favorable position than those who can take advantage of the free education provided by the act of 1890. That may be so. *But what right or privilege is violated or prejudicially affected by the law ?* It is not the law that is in fault ; it is owing to religious convictions, which everybody must respect, and the teaching of their church, that Roman Catholics and the members of the Church of England find themselves unable to partake of the *advantages which the law offers to all alike.*"

Their Lordships here put their finger on the vital spot. The law offers advantages to all alike. It discriminates neither in favor of, nor against, any person or class of persons. If any persons feel themselves placed at a disadvantage, "it is not the law that is in fault." The source of the disadvantage is within themselves. It may entitle them to respect, as their Lordships observe, but not to exemption or other favorable discrimination. In regard to a much disputed point, on which the separatists lay much stress, their Lordships say : "They cannot assent to the view which seems to be indicated by one of the members of the supreme court, that public schools under the Act of 1890 are in reality Protestant schools."

Then, glancing at the economic and political aspect of the question they say : (and let the Governor-General-in-Council and the politicians generally closely follow this pronouncement) "With the policy of the act of 1890 their Lordships are not concerned. But they cannot help observing that, if the views of the respondents (the Roman Catholics) were to prevail, it would be extremely difficult for the provincial legislature, which has been entrusted with the exclusive power of making laws, relating to educa-

tion, to provide for the educational wants of the more sparsely inhabited districts of a country as large as Great Britain, and that the powers of the legislature, which on the face of the act appear so large, would be limited to the useful but somewhat humble office of making regulations for the sanitary conditions of school houses, imposing rates for the support of denominational schools, enforcing the compulsory attendance of scholars, and matters of that sort."

There is a very strong suggestion of sarcastic humor in the latter words just quoted. Their Lordships were evidently struck with the essential absurdity of the whole situation, and have gone as nearly to expressing their sense of jocularity in these words, as such an august tribunal could afford to go, consistently with its dignity. The idea of a legislature, whose jurisdiction is defined by a statute which impressively commences by saying that the legislature shall "exclusively make laws," being reduced before the section is completed, to the "useful but somewhat humble" functions of a municipal council, seems to have struck their Lordships as an exceedingly humorous conception. They were doubtless also struck with the doctrine which is gravely involved in the contentions of the separatists, that the few simple-minded natives of Red River in 1870 had acquired a right to legislate for the province of Manitoba for all time. And no wonder. The innate preposterousness and absurdity of the political doctrines involved in the case of the separatists, taken in connection with the seriousness with which they are urged, is enough to upset the gravity of even a more solemn body than their Lordships, if any such exists.

It may be and has been charged, that the last judgment of the Judicial Committee is inconsistent with their first. But this charge is not borne out on comparision of the two judgments, and on a fair and careful and common sense reading of the latter one. While their Lordships discharge their functions of strictly construing the words of the statute, they do not leave any doubt as to the impression which the statute itself created in their minds. They say: "It may be said to be anomalous that such a restriction as that in question should be imposed on the free action of a legislature, but is it more anomalous than to grant to a minority who are aggrieved by legislation, an appeal from the legislative to the executive authority? And yet this right is expressly and beyond all doubt conferred." Undoubtedly their Lordships' astonishmeut had good grounds, for there is probably no other case in all the records of parliamentary government, in which a legislative body is prohibited from repealing its own acts, and in which valid and constitutional legislation may be appealed against to an executive authority. Moreover, we venture to assert that such a provision is contrary to the spirit and principle of government of the people by themselves.

Whilst the whole text of the latter judgment shows that their Lordships clearly defined their own function to be that of construing the words of the statute, and whilst they declare that the course to be pursued must be determined by the authorities to whom it has been committed by the statute, the last or rather the penultimate paragraph of their judgment is couched in language which the Separatists contend give the judgment the effect of a mandate. This paragraph reads: "It is certainly not essential

that the statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these statutes should again be made law. The system of education embodied in the Acts of 1890, no doubt commends itself to, and adequately supplies the wants of the great majority of the inhabitants of the province. All legitimate grounds of complaint would be removed if that system were supplemented by provisions which would remove the grievance upon which the appeal is founded, and were modified so far as might be necessary to give effect to these provisions."

Now, in the first place, it is as well to note that the "grievance" to which their Lordships refer is not a real or moral grievance, but merely a statutory one. The only grievance that the Roman Catholics have consists in the fact that certain "rights and privileges" which were conferred upon them by a provincial statute, and which they alone enjoyed to the exclusion of all other sects and classes of the community, were withdrawn by the same authority which granted them, leaving them in a position of exact equality with all other classes. In the extract we have already given from their Lordship's first judgment, it is very conclusively shown that in their Lordship's opinion the Roman Catholics have no real or moral grievance on account of the operation of the laws of 1890.

The expression "grievance," then, as used by their Lordships, is purely a legal-technical one. Now, it is rather difficult to conceive of provisions being made to remove a grievance resulting from legislation, unless that legislation should be repealed or something done which would have an equivalent effect. We confess that we are at a loss to reconcile the first with the last sentence of the paragraph just quoted.

The possible explanation is that, as the grievance complained of is not a moral grievance, but merely a statutory one, it could be entirely removed by the repeal of the statutory provision on which it is based.

The Judgment not a Mandate.

The quoted paragraph of their Lordship's judgment could, we think, hardly be construed as a mandate. But even if it had mapped out some specific line of action, to be followed by the Governor-General-in-Council, it need not have been followed because the issuance of such directions was not involved in, or necessary to, a decision of the case before the Court.

Mr. Dalton McCarthy deals with this point in his argument for the province before the Governor-General-in-Council. He says : "Now, there is a well-known rule, that if a court of law goes beyond what is necessary for the decision of a case, the decision is not binding ; it is what is called *obiter*. They have no more right to affect the interests or rights of parties by going beyond the question itself, than a mere stranger has. The court is limited in its decision, and this has a binding character only so long as it is confined to the questions which were submitted." Judging by Mr. McCarthy's eminence as a lawyer, as also by the fact that his statement was not called in question, this seems to be sound law. Their Lordships themselves defined the scope of their inquiry to be as to whether an appeal to the Governor-General would lie. Anything in their judgment, therefore, not bearing on the validity of the appeal would be an *obiter dictum*, and of non-effect.

The Functions of the Governor-General-in-Council.

The Judicial Committee of the Imperial Privy Council have decided that the Roman Catholic minority of Manitoba have a right of appeal to the Governor-General-in-Council. That is all that tribunal has decided or could decide. The Governor-General-in-Council is, in other words, the Dominion government, which holds its power by virtue of the support of a majority of the members of the Dominion or Federal parliament. It is, therefore, a political body, and in this matter is sitting in a political capacity as explained by the judges of the privy council, and as admitted by the counsel for the Roman Catholics and by Sir Mackenzie Bowell, the president of the council. Now, a judicial tribunal in hearing a case, is merely called upon to explain or construe the terms of a statute. Any decision of a judicial tribunal on the facts or merits must be in accordance with, and within the limitations imposed by the statute or statutes, which bear upon the question submitted to them. A political tribunal in a case like the present, is not bound by the terms of any statute. Considerations of public expediency and public well-being and sound policy must be taken into account by it, and all the broad and general ethical and political factors, must also be considered. Such a body may not, of course, take any step which would have the effect of contravening the provisions of any existing statute. But in discretionary matters such as the present, it is to be guided solely by the facts and circumstances, the right and wrong of the case, as these shall be ascertained, after careful and conscientious investigation and discussion.

The statute which provides for the appeal, does not specify the course which the Governor-General-in-Council shall take after he has heard the appeal. It does not even indicate that he need do anything. His discretion is of the very widest. This was most clearly recognized not only by the judges of the Judicial Committee, but by the counsel of the Roman Catholics themselves. As we have already seen, the Lord Chancellor, addressing Mr. Blake, says: * * * "then you say there is a case for the jurisdiction of the governor general and that is all we have to decide." To which Mr. Blake answers: "That is all your Lordships have to decide. What remedy he shall purpose to apply is quite a different thing."

Mr. Ewart, Mr. Blake's junior counsel in the case, says in the course of his argument: "We are not asking for any declaration as to the extent of the relief to be given by the governor general. We merely ask that it should be held that he has jurisdiction to hear our prayer, *and to grant us some relief, if he thinks proper to do so.*"

Yet, if we mistake not, Mr. Ewart is one of those who now publicly contend that the judgment of the Judicial Committee is of necessity a command to the Canadian government and parliament to restore separate schools.

Mr. Ewart again says in the same argument: "The power given of appeal to the government, and upon request of the governor, to the Legislature of Canada, seems to be wholly discretionary in both."

We should think there could be very little doubt as to the discretion of the Governor-General-in-Council.

The Remedial Order.

The judgment of the Imperial Privy Council has been interpreted by the Governor-General-in-Council as a mandate to him to demand of the Manitoba legislature the restoration of separate schools. If such were the correct intepretation it would seem to the ordinary observer that anything in the nature of a further trial would be somewhat of a farce. Yet the Governor-General-in-Council evidently thought that a further trial was necessary, and notified the parties that they would be heard. A most elaborate argument was made, lasting four days. On March 21, 1895, the Governor-General issued an order in council in which is reiterated, almost verbatim, the peculiar penultimate paragraph of the judgment of the Imperial Privy Council, which we have quoted, and he declares "that it seems requisite that the system of education embodied in the two acts of 1890 aforesaid, shall be supplemented by a provincial act or acts which will restore to the Roman Catholic minority the said rights and privileges, of which such minority has been deprived as aforesaid."

This is virtually an order by His Excellency in Council to the province, to reinstate separate schools, and go back to the conditions which existed prior to 1890. The Governor-in-Council has obviously not availed himself of his discretionary power. In the Remedial Order, the political or ethical factors which the Governor-in-Council was entitled, and bound in duty, to take into consideration, are not so much as alluded to. The very important question of the soundness from an ethical, political or economic point of view, of the present system, is not considered by His Excellency in Council. Neither is the still more important consideration of the nature and bearing on the freedom of our political institutions, of sub-sections 2 and 3 of the Manitoba Act. The order is a mere recital of the statutory provisions, and an account of the proceedings in the litigation. The judgment of the Imperial Privy Council, which is merely a declaration that the Roman Catholic minority have a right of appeal, has been interpreted by the Governor-in-Council, as a mandate to answer the appeal in a certain way.

It is to be hoped that the attention of parliament when the matter comes before it, may be specially directed to the following significant passage in the Remedial Order: "The Committee therefore recommend that the Provincial Legislature be requested to consider whether its action upon the decision of Your Excellency in Council should be permitted to be such, as while refusing to redress a grievance, which the highest court in the Empire has declared to exist, may compel parliament to give relief, of which, under the constitution, the Provincial Legislature is the proper and primary source, thereby, according to this view, permanently divesting itself in a very large measure of its authority; and so establishing in the province an educational system which, no matter what changes may take place in the circumstances of the country or the views of the people, cannot be altered or repealed."

This sentence, in so far as it has an intelligible meaning, is a most pregnant one. It obviously menaces the Manitoba legislature with the possible permanent loss of its jurisdiction, in event of non-compliance with

the terms of the order. "The committee," however, with considerable lack of astuteness, evidently overlooked the fact that if the Manitoba legislature should comply with the demands of the order, its compliance would have precisely the same effect in depriving it of its jurisdiction, as would its refusal to comply. The committee, apparently, had forgotten for the moment the effect of the provisions of the "anomalous" sub-sections 2 and 3 of section 22, of the Manitoba Act. If the Governor-in-Council's interpretation of that sub-section is sound, then any legislation which the Manitoba legislature might now pass on the lines of the Remedial Order, would be quite as irrevocable by it as would be a Dominion Statute of the same trend. If that is the case the provincial legislature might as well permit the Dominion parliament to enact the legislation which will permanently divest the legislature "of a large measure of its authority."

The committee evidently fancy, or wish to make the Manitoba legislature believe, that if the legislature complied with the order, and thereby retained its jurisdiction, it would, somehow or other, be able, at some future time, to legislate in such a way as to meet the requirements which might be created by a change "in the circumstances of the country or the views of the people." Such changes have already taken place, and the legislature repealed the laws which had become unsuitable because of these changes, and enacted new ones to suit the changed circumstances and views. But the Committee declares that the laws which the legislature has repealed, practically "cannot be altered or repealed," and that the laws which it enacted are inoperative. What jurisdiction, in these circumstances, can the legislature imperil, by refusing to comply, or what can it save by complying?

SECOND PART.

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Progress and Incidents of the Controversy.

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The answer of the government of Manitoba to the Remedial Order, which practically demanded the restoration of separate schools, was a substantial refusal to comply with the demand. The answer was an able and well considered document. The language was clear, well chosen and moderate. The tone was expostulatory rather than defiant. It was in marked contrast, both in the matters of lucidity and of tone, to the prolix and peremptory communication of the Dominion authorities. The reply of the Manitoba government pointed out that no change of a radical nature could, or need be made in the system of education established by the law of 1890, because, in the first place, that law was entirely within the constitutional powers of the legislature which had enacted it ; because it suited the economic conditions of the province ; because it replaced a system which was emphatically unsatisfactory in its results, and was based on an unsound principle. It also pointed out that the Dominion government was manifestly ignorant of certain essential, and of many minor, facts bearing on the case. It further suggested that, probably on account of the haste with which it had pushed the exercise of its remedial authority, the Dominion government had overlooked some very important considerations, due cognisance of, and attention to which, were absolutely indispensable to a just and efficient discharge of its appellate duties.

The Manitoba authorities therefore suggested that an enquiry into all the facts and merits of the case should be made by the Dominion government, and they offered their co-operation and assistance in such an enquiry.

The reply of the Manitoba government was met by a rejoinder, in which the Ottawa government virtually ignored the suggestion that an enquiry be made. The rejoinder was really an ultimatum, and it was accompanied by a declaration in parliament, that if Manitoba should not in the meantime remove the "grievances" of the "minority," or give some tangible undertaking that such relief would be forthcoming at an early date, a session of parliament would be called for January 2nd, 1896, at which a bill would be introduced providing the relief. The reply of Manitoba to the ultimatum did not alter the position of matters. Parliament met on January 2nd, 1896, but many weeks elapsed before the Remedial

Bill was introduced. The interval was consumed by probably the most discreditable exhibition of personal squabbling and petty intrigue between the members of the Ottawa government, that has ever been seen in Canadian parliamentary history.

In the meantime the government of Manitoba, in view of the menacing attitude of the Dominion authorities, and of the grave situation with which the province was confronted, had dissolved the legislature and gone to the people of the province, with this question as the issue of the election, which was held on January 15, 1896. The government expressed its determination, if returned, to make no compromise involving the restoration of the separate school system, be the consequences what they might. The election resulted in an overwhelming victory for the government, and was an emphatic expression of the determination of the people of Manitoba to resist any and all encroachments on their rights.

The Remedial Bill was a ponderous and awe-inspiring legislative effort. It may be said, to some extent, to have been killed by its own weight. It contained 112 clauses. It did not embody the changes specified by and provided for in the Remedial Order, and would, therefore, have been unconstitutional, in the opinion of some respectable legal authorities, even if it had passed. It contained provisions, however, which involved the practical restoration of state-supported separate schools and a full recognition of the principle.

The second reading of the measure was carried by a majority of eighteen, which included the votes of six Catholic Liberals, who supported the Government. The normal majority of the government on a strictly partisan division was fifty-three. The result, therefore, shows that but for the adhesion of the six Liberal recalcitrants, the government would have narrowly escaped defeat on the second reading. It indeed suffered a practical moral defeat, because its support on this division was composed to a very large extent of place hunters who had succeeded in their object, and who were virtually office holders, some of them being within a few days or weeks, in actual occupation of the offices of which they then had the assurance. Such are the methods by which, when the party in power is hard pressed, expressions of the "will of the people" on questions of vital importance are secured in the parliament of Canada. Manifestly the educational question is an all important one. Till the Canadian public have their intelligence and their moral sense developed to the point at which they will be able to see the folly and absurdity of the prevailing idolatry of party or faction, the public business will continue to be conducted on the principle of the hippodrome.

The third reading of the bill was never reached, as its opponents, by the adoption of a policy of tireless opposition, obstructed the measure in committee so effectively that only a very few clauses had been passed when parliament was prorogued on April 23rd, 1896. Its dissolution by effluxion of time would have taken place the following day. The course of the men who fought and obstructed the passage of the bill has been severely characterized by the government. It is our opinion, and it is, we believe, that of the country, that the obstructionists performed their duty in a most creditable manner, and that they have earned the gratitude of the Dominion in saving it from an indelible disgrace, and from endless

trouble. The odium and the disgrace of the unseemly proceedings lie on the men who, in the last days of a parliament composed to some extent of corrupted office seekers endeavored to force through a measure which could not have failed to strain the bonds of Confederation.

In the interval which has passed since the publication of the earlier portion of this review, there has been an incessant and tumultuous literary controversy carried on, of which this school question has been the subject. Probably half the members of the Canadian brigade of the cosmopolitan army of literary Quixotes have broken a lance in favor of, or against the attitude of Manitoba. The large proportion of the other half has probably been held back from the fray by the heartlessness of matter of fact, unsympathetic editors, who, of course, are, as a class, so dull of perception and so wanting in refinement and in literary discrimination as to be quite incapable of appreciating, and actually consign to the waste basket, many works of genius which are offered to them without money and without price.

The Gravel Incident.

One of the most striking incidents of the controversy was what is known as the "Gravel Incident."

In June, 1895, Mgr. Gravel, Bishop of Nicolet, issued to the clergy of Canada some extraordinary documents regarding the Manitoba school question. The first is a report to the Holy See, which he was asked to prepare by Cardinal Ledochowski, Prefect of the Propaganda, when in Rome in 1894. It purports to give a history of the case, in the course of which it says that Riel was given the "mission to prevent the entrance into the country of the officials of the government of Canada, and that the leader accomplished his purpose victoriously." Bishop Gravel intimates that Cardinal Vaughan, at the request of Cardinal Ledochowski, influenced the judgment of the privy council in favor of the Catholics of Manitoba. He then transmits the protocol of Cardinal Ledochowski, which is practically the mandate of the Pope to the Roman Catholic Bishops of Canada.

It is probable, as will be surmised, that Bishop Gravel's circular to the clergy was not intended for general perusal, but somehow the entire document reached the press. It attracted much attention and some very unfavorable criticism.

It may be interesting to recall the salient facts of the incident. Bishop Gravel was requested by Cardinal Ledochowski, Prefect of the Propaganda (whose office at the Vatican is somewhat analogous to that of Secretary of State for Foreign Affairs in the British Government), to prepare a report on the Manitoba School Question. In compliance with this request, the Bishop made a report which was submitted on December 7th, 1894. The matter was considered by the church authorities to be one of great importance, and it would naturally be thought that the Bishop would spare no pains to secure and to verify all available data, so that the accuracy of his report would be unimpeachable, and its exhaustiveness leave nothing to be desired. But strangely enough he commences it: "I have done the work from memory, not having any book or document relating to this question. I believe, however, that I can affirm that the

account which I give of the events surrounding this affair is strictly true." This shows the folly of relying on human memory in a matter of importance, even if the memory be an episcopal one. For the account given by the Bishop is so inaccurate in regard to some of the most essential facts as to render the whole recital a gross perversion. His descriptions of the functions and *modus operandi* of the Imperial Privy Council is decidedly piquant and interesting. Referring to the judgment in which that tribunal held that the Manitoba School Legislation of 1890 was strictly constitutional, the good Bishop says: "That Council, which is the guardian of British interests, considered that it was more advantageous for the peace of the Empire to affirm the autonomy of the Province of Manitoba than to maintain the rights of the Catholics. It therefore reversed the judgment of the Supreme Court of Canada, and declared to be constitutional the obnoxious law passed by the Legislature of Manitoba. To reach that conclusion the Privy Council affected not to understand the force of the evidence furnished by the negotiations which had taken place at the time of the union, and by solemn assurances given by the Crown."

It will be observed that the worthy Bishop evinces a cynical readiness to assume, as the most natural thing in the world, that the judges of the British Privy Council, the most exalted tribunal in the Empire, whilst pretending to adjudicate on cases brought before them solely on the facts and merits of these cases, and with regard to the rights and interests of the parties, really considered in the first place the policy and the necessities of the statesmen, who for the time being might be ruling in Britain. This idea is rather startling.

Commenting on the statement by the Judicial Committee of the reasons on which its judgment was based, the right reverend reporter remarks: "That reasoning is so lame that it is impossible to believe that men of such intellectual strength as the noble Lords could have advanced it in good faith."

The gentle *naivete* with which the Bishop makes his startling accusations of duplicity and bad faith against such a body is not the least remarkable feature of the incident.

In view of Bishop Gravel's opinion of the ethical standards of the Privy Council, and of the considerations which influence it in arriving at its decisions, his suggestion to Cardinal Ledochowski is not at all surprising. He proceeds: "Now, I am asked if the Sacred Congregation of the Propoganda can usefully intervene in the settlement of this important question. * * * It might, perhaps, through the intervention of His Eminence Cardinal Vaughan, represent, among other things, to the Colonial Minister in London, that his predecessor, Lord Carnarvon, had given in his own name, and, in the name of Her Majesty the Queen, the assurance to the Catholics of Manitoba that they would have their Separate Schools, and that, consequently, the Crown is bound in honor to fufil these solemn promises, if it does not wish to alienate the hearts of the Catholics of Manitoba. *An intimation of this nature might have a good effect in reference to the judgment which the Privy Council will deliver within a few months.*"

This suggestion was made, be it remembered, after the case had been argued before their Lordships and the evidence all submitted to them.

Now, these alleged facts, which the Bishop recited, if they had been true facts, would all have been brought out in the evidence in the case, and the attention of their Lordships would have been drawn to them by the legal counsel for the Catholics in their argument. Why, under these circumstances, was an intimation to the judges, through the Colonial Minister, coupled with the suggestion of the possible alienation of the hearts of the Catholics of Manitoba, thought to be necessary? As a matter of fact, the recital of Bishop Gravel was a gross misrepresentation of the whole question. His essential facts were wrong, and there was no such promise as he alludes to either on the part of Lord Carnarvon or Her Majesty the Queen. It is impossible to avoid the conviction that the real import of Bishop Gravel's suggestion is that the threatened estrangement of the Roman Catholic authorities, which would hardly be confined to the Province of Manitoba, and the political difficulties which would follow to the British Government from such estrangement, were to be used as a lever to influence the Judicial Committee to find some pretext to deprive the small and comparatively insignificant Province of Manitoba of those constitutional rights, which had been confirmed to it, by the previous judgment, as this course would, to use the language of the Bishop, be "more advantageous for the peace of the Empire."

This incident, as may be imagined, created a profound sensation. It had somewhat the effect of a vivid flash of lightning on a dark night. It exhibited things whose existence had not been dreamed of. It is impossible to avoid the presumption that efforts were made to influence the judgment of the privy council. It is equally impossible to believe that these efforts in any way determined the verdict of that tribunal.

Principal Grant's Letters.

One of the most remarkable contributions to the literature of the controversy, was a series of letters contributed to the Toronto *Globe* by Rev. G. M. Grant, D. D., principal of Kingston University. These letters were worthy of serious attention, not so much on account of their intrinsic value, as of the prominence and recognized ability of the writer. The rev. principal did not do justice to his reputation in the contributions in question, which contained several grave errors as to fact, and some erroneous conclusions, evidently the result of haste, insufficient study, and not the best of good fortune in regard to the impartiality of the sources of his information. It was quite apparent from the tone and argument of the later articles of his series, that if he had spent as many weeks in the province before commencing the series, as he had spent days, the earlier parts would have been very different.

Dr. Grant severely criticized the Dominion government for its Remedial Order and condemned its proposal to introduce remedial legislation. But in his first letters he dropped into some very serious errors and misconceptions. His articles, are very largely occupied by a description of the schools, and of the quality of the teaching. Much of this portion of his work is interesting, but it is nearly all quite irrelevant to the question at issue. He admits that the teaching in the Catholic schools prior to 1890 was grossly inefficient. He thinks this was the difficulty which faced the

Manitoba legislature and to overcome which it enacted the law of 1890. He says: "The real problem then amounted to this: Seeing that one-tenth of the schools in the province were badly taught, how shall we improve these?"

To persons who thoroughly understand the question, it is almost inconceivable that a man of Dr. Grant's experience and ability could be capable of making such a fundamental and colossal blunder as this.

If the problem before the legislature had simply been the inefficiency of the Catholic schools, Dr. Grant's argument that legislation looking to the improvement of the teaching, and not to the abolition of the system, was what was wanted, would be quite valid. As a matter of fact the inefficiency of the Catholic schools was merely an incident, and not the essential element in the situation which culminated in the now celebrated laws of 1890. Had these schools been efficient the necessity for that legislation would still have existed. Columns of dreary twaddle have been written from one side and the other on this merely incidental phase of the controversy, which, to our mind, can serve no purpose but to confuse and distract attention from the real issue, and to unnecessarily engender or increase bitter feeling. It seemed to us, indeed, that the only weak feature of the Manitoba government's reply to the remedial order, which was in other respects an exceptionally strong, concise and courteous document, was the prominence given to this matter of the inefficiency of the Catholic schools.

The Real Problem.

The "real problem" which confronted the Manitoba legislature in 1890, had two distinct but very important aspects. The province was then, and for that matter, is now, practically a new country. The settlement was sparse, and was scattered over a very large territory. The settlers who were coming into the country were of various nationalities, and spoke different languages. The intelligence and previous experience of some of these immigrants were not such as to fit them to exercise their rights as citizens of a self-governing community with advantage to themselves or with safety to the state. For reasons which will be self-evident, it was urgently necessary in the interest of popular government, that facilities for the education of these heterogeneous elements, or their offspring, should be provided. The provision of this education was the real problem confronting the legislature, and it was seen that the only effective and economical, and indeed possible way to attain this end was the establishment of a uniform system of education under the protection and supervision of the state.

The other aspect of the "problem" was inseparably interwoven with that just described. Up till that time there had been in existence a double system of schools which had been instituted by the legislature of the province in 1871. The Roman Catholics had a system of schools supported by taxes and controlled by the clergy. All other sections of the community, under the comprehensive but very inappropriate and misleading designation of Protestant, used the other system, which was in reality a common school system. The legislature declared that this state

of matters involved discriminations and distinctions which were incompatible with, and repugnant to, the principles underlying our form of government, and that it was entirely inconsistent with the doctrine of entire separation of church and state, which the legislature declared to be a sound doctrine. The legislature also saw that the cost of educating the people under a double system would be so great, under our conditions, as to render education simply impossible if the immigrants should be partly Catholic and partly non-Catholic.

The "real problem" then, involved the most practical considerations as well as the most important principles.

When Rev. Dr. Grant was in Winnipeg he preached a sermon, in which he emphasized the necessity, when erecting a structure, of laying the foundations broad and deep and sound. In facing its "problem" the Manitoba legislature proceeded on that principle. It was legislating for a community practically at the beginning of its existence. It determined to lay the foundations with such strength, solidity, and soundness of design, that future generations would not require to tear down the superstructure and do the work over again. It abolished all class privileges. It placed every sect and individual in the community in a position of absolute freedom and absolute equality, and that is the position in which they are to-day. It is to be steadily borne in mind that the "rights" which the separate school party claim, are privileges which never were, and never could be, possessed by any other portion of the community.

If the constitution of the province had been so framed as to debar the legislature from legislating as it did, that would only have shown that the constitution was defective and required amendment. But the Imperial Privy Council declared that there was nothing in the constitution to prevent Manitoba legislating as she had done. Dr. Grant believes that the laying of a broad and sound foundation is a good theme for preaching. He has not, apparently, so much admiration for the process when it is applied in practice, for he has for some reason which does not become apparent in his contributions, suggested that the dispute be settled by some sort of a compromise, the terms of which he does not indicate.

It will be seen that the "real problem" was a much larger and wider question than that with which Principal Grant supposed the legislature had to deal.

Not a Minor Question.

In view of the trend of modern civilization, of the portentous questions that are looming up on the social and political horizons, it is imperative that all self-governing communities, whose purpose it is to preserve their freedom and integrity, shall be composed of intelligent individuals.

There is no duty to-day devolving upon a legislature or a government in a state such as ours, which demands more of its attention, or entails a weightier responsibility, than that of providing for the education—the development of the intellect, the judgment and the moral sense—of the future citizens. To do this effectively the best system and methods must be adopted, and all cumbrous appliances or faulty institutions, which operate as obstructions to the attainment of the object, must be eliminated.

It has been the fashion amongst a few pseudo-sagacious writers on this subject, since the publication of Dr. Grant's letters, to treat the whole matter in a spirit of contemptuous disgust. The Manitoba school question has been referred to as a "wretched affair," a "petty squabble," over the proper way to educate a few hundred Catholic children, or, as one paper put it, the children of a "handful of French half-breeds."

It has been pointed out that the predominance of this "wretched question" as an issue in the politics of the country is interfering with our material interests, which is undoubtedly the case.

It is also argued that because the present Catholic population of Manitoba is concentrated in one or two districts in which there is practically no Protestant settlement, the granting of separate schools by the province would not have any different result in future from that produced by the operation of the present system

Now it will be found that nine-tenths of those persons and journals who treat the question as a "squabble" and a "nuisance," are persons and journals who are partisan supporters of the Dominion government. They feel that the position of Manitoba is sound and inpregnable, and that the course of the Dominion government is indefensible. They wish, therefore, to minimise the importance of the question as an issue in the politics of the country. One Winnipeg journal has actually declared and reiterated, that the school question is dead and is not now an issue in the impending election, and that whosoever shall try to make it an issue is a bigot and a traitor to his country's interests. At the same time, the leaders of the party which it desires to assist, declare that, if returned to power, they will enact the coercive measure which they were unable to force through at the last session. As the author of the school laws of 1890 (Mr. Martin, M. P.) declared at a public reception recently given in his honour, in Winnipeg, it would be very satisfactory indeed to know that the question was "dead." The people of Manitoba would wish for nothing more ardently. They are prepared to let it rest. But they know that the question will be an issue although they will not make it such. They are quite prepared to face the issue squarely, as they have done from the beginning. They are quite alive to the disturbing nature of the dispute on the material well-being of the community. But who is responsible for this ? Is it the people of Manitoba who have merely exercised their declared constitutional rights, and who propose to resist any invasion of these rights ?

Regarding the argument that, as the Roman Catholics of Manitoba are at present grouped gregariously in one or two districts, and that therefore the institution of state aided separate schools would really make no difference, it may be said that it is characteristic of the class of opportunists which is altogether too numerous, whose highest and whose only governing principle is the expediency of the hour. Manitoba, it is to be remembered, is a very large, and at present a comparatively empty territory. Its population is little over 200,000. Its resources are capable of maintaining in a high degree of comfort at least two or three millions of people. In the more sparsely settled districts, population is wanted and it is to be hoped that every capable Roman Catholic who believes he can improve his condition by emigrating, will come to Manitoba. He will certainly be welcome. He will find that in no country in the world, does

a man's creed figure less as a factor in his social and commercial relations, than in Manitoba. He will find that he has every privilege which is enjoyed by any other citizen, in education as in everything else. But Manitoba does not hold out, as an inducement to Catholics or to possible immigrants of any other sect, the promise or the possibility of any special privileges or immunities based on sectarian distinctions. It will occur to the reader that if, in the future settlement of the province, there should be a considerable proportion of Catholics who should distribute themselves over the whole provincial area, the existence of a statutory provision for a dual system of schools, would, in spite of the sagacious opportunism of those very "practical" persons who sneer at the idea of acting on principle instead of expediency, have a very practical effect on the educational interests of the province. We know the unchanging policy of the Roman Catholic church with regard to education, we know that as soon as the settlement should thicken, the country would be dotted by the little public school and the still littler separate school, both conducted on a scale of impaired efficiency because of the scattering of the resources. All Manitobans who have studied this important question of education, know the difficulty, the cost, and the disheartenment involved in providing education in a new country, even in the more populous districts, and when the children of a district can all be educated together. The cost and the difficulty would obviously be hopelessly enhanced, if a dual system were made possible.

In this controversy the opponents of Manitoba have frequently pointed to the Ontario School System, which it is frequently asserted, is the "best in the world," and under which a high degree of efficiency has been attained. Now the Ontario system is a dual one, and the object of the allusions to that system, is to show that if Separate Schools are not actually conducive to a high standard of public education, they are at least not incompatible with it. This is analogous to arguing that because strong men frequently use tobacco, tobacco must be productive of strength or at least not destructive of it. Physiological science, however, shows that tobacco not only does not produce strength, but diminishes or subtracts from the vital forces. The same result may be found on an investigation of the operation of the Ontario system. Complaint may be heard in every direction of the heavy taxation which is necessary to the support of the schools, and which is necessarily rendered more onerous because of the division of the energies. It is an undoubted fact, that in many districts in Ontario the cost of public education is increased and the efficiency diminished, by the existence of the separate school system. By intelligent men in Ontario, regardless of partisan proclivities, the separate school system is not regarded as a good thing in itself, but simply as an evil and a drawback of which they cannot rid themselves.

This is merely considering the question in its economic aspect, and from the most sordid and material point of view. Viewed from the higher ground of sound political doctrine, the separate school system is still more objectionable.

There is another very important reason why Manitoba should resist *a l'outrance* the establishment of the separate school system in the province. Manitoba, whilst it covers a large area, is very small when compared

with the vast domain known as the North West Territories, which have not yet been sub-divided into autonomous provinces, and in which the population is still sparse. Now this great land came into the Canadian confederation at the same time, and, it will probably be argued, under the same conditions, as the province of Manitoba. If, therefore, there is an obligation on Manitoba to tolerate state-aided separate schools, that obligation would be upon all the provinces which shall be in the future carved out of the Territories. This consideration greatly emphasizes the duty which confronts the people of Manitoba, of maintaining the rights and the liberties of the province in this matter.

Perversions of the Second Judgment.

It has been the habit of all the supporters of the Dominion government in its "remedial" policy, to make constant reference to the last judgment of the privy council, which, according to them, declares that the "minority" has a "grievance" which the government was bound to redress, and even Principal Grant has been led into misconception on this point. In one of the letters of his series he states that Manitoba "is morally bound to take action which shall meet the spirit of the last judgment of the Privy council." This obviously implies that there is something in the judgment of the Privy Council, which indicates that Manitoba has exceeded her powers, has dealt unjustly or harshly with the "minority," and is under an obligation of either a legal or moral nature, or of both a legal and moral nature, to do something which the principal does not specify, but which, if his inference as to the import of the Privy Council's judgment is correct, can be nothing less than the restoration of separate schools. Now to understand the effect of that last judgment of the Privy Council it would be well to recall briefly what was before the judges. The circumstances and conditions under which this reference was made, as well as a statement of the questions referred, have already been fully given in the first portion of this review.

The question before their Lordships was, as we see, not as to whether there was a grievance, but as to whether, in view of the facts stated in the petition, the case was one which came within the scope of sub-section 22, and in which an appeal to the Governor-General-in-Council would lie. It is to be clearly observed that an appeal under this "anomalous" subsection might be allowable, whilst no grievance existed. In fact, having in our minds the description given by their Lordships of the limitations of their functions in the case, and their opinion of the provisions which they were called upon to interpret, we can see that they might quite logically have decided that the appeal would lie, whilst at the same time expressly stating that there was no grievance. This is actually what they have done, if their first and second judgments be considered together. It should be carefully observed that the second judgment does not reverse, nor in any way modify, the first one. The questions before the tribunal on the different occasions had no relation nor connection with each other.

But, as has been observed, the Judicial Committee in using the word "grievance," simply employed it to describe, in an entirely technical way, the ground of appeal in much the same way as the term "complaint" is used in the same connection.

Enough has already been said to show that there is nothing, and that there could be nothing, in either the letter or the "spirit" of their Lordships' second judgment, upon which "Manitoba is morally bound to take action." If so, what is it? Their Lordships have clearly shown in their first judgment, that the Manitoba laws of 1890 are fair and just, and well adapted to the requirements of the country. They decide, moreover, that in enacting these laws the legislature of the province acted strictly within the Constitution. In their second judgment they declare that by the strict construction of a sub-section of the Manitoba Act, which they very appropriately describe as "anomalous" the Roman Catholics have a right of appeal to the Governor-General-in-Council, against the legislation which their Lordships, be it observed, have declared to be just, wise and constitutional. There is the substance of both judgments in a few words. Where is the "grievance" and what is Manitoba called upon to do?

The Controversy in Parliament.

Mr. Foster's Exposition of the Remedial Policy.

It is very interesing, and also amusing, to study the shifts and changes of base and attitude, to which the supporters of the coercion policy are forced in their efforts to give to their course an air of seriousness and consistency. The *piece de resistance* in the parliamentary defence of the Remedial Bill, was the speech of the Minister of Finance, Mr. Foster. This oration was evidently considered to be a very telling contribution to the discussion; for it was issued as a pamphlet, copies of which were sent by those Manitoba members who had voted against the interests and the wishes of Manitoba, to many of their constituents.

Goethe, the great German poet, expressed in poetic language, his desire for the gift of seeing things as they are. On reading Mr. Foster's speech, one might be impressed with the conviction that the deepest yearning of the Canadian politician is for the gift of making things appear as he would like them to be. There was nothing particularly original in Mr. Foster's deliverance. It was aptly described by a subsequent speaker as "a scrap-book speech." Yet the collection of the matter evinces much industry, and the arrangement is certainly deft. The speech is calculated to create in the mind of the critical and deliberate observer, the impression that Mr. Foster is quite aware that he is not expounding the reasons and explaining the facts which determined the policy of coercion, but that he is making reasons and arguments to fit his conclusions.

Mr. Foster thinks this vexed question is not intrinsically a complex one, and that "the importance which attaches to it at the present time is due rather to the complication with it of side issues." With this the

writer heartily agrees, and has already hinted at some of the "side issues," a reference to which, coming from Mr. Foster, seems rather surprising, and must surely have been inadvertent.

Separate Schools a "Principle of Confederation."

Mr. Foster says this is not a question of Provincial rights, with which contention the writer emphatically disagrees. Nor is the question one of separate schools. This proposition is absurd. The time for the discussion of the desirability or the undesirability of separate schools, says Mr. Foster, has long gone past. "The principle of separate schools was settled once for all * * * by the fathers of Confederation, and embodied in the constitution itself." So says Mr. Foster. He did not, in the course of his speech, divulge the source of this exclusive and surprising intelligence, nor did he succeed in showing that it was accurate. Let us consider. If the separate school system was a "principle of Confederation," it would apply to all the provinces except in cases where specific exemption was made. Now there is no record in the Confederation Act, or any other act, of the exemption of any province from the operation of this supposed "principle." Yet, as a matter of fact, separate schools do not exist in any province to-day, except in Ontario and Quebec, and we shall deal presently with the reasons for their existence in these provinces. Now if separate schools is a "principle of Confederation" how is it that out of the seven provinces the system is in operation in only two? In the earlier part of this review, we referred to the cases of New Brunswick and Prince Edward Island, both of which provinces were compelled to undertake a struggle, similar to that in which we are now engaged, before they obtained their educational enfranchisement. In this connection, it is a remarkable fact, that the present leader of the Ottawa government, Sir Charles Tupper, who now seeks to override the school law of Manitoba, was the author, or principal promoter, of a substantially identical law in the province of Nova Scotia, which was enacted under practically similar conditions. How about the "principle of Confederation," the "constitution," the "solemn compacts" and the other stage "properties," in view of the position of these provinces? Mr. Foster says: "We ought to come down to the discussion and settlement of this question as it arises under the constitution, and as it affects the rights of minorities which were legislated for under that constitution. It seems to me, Sir, that there are but three points of view from which it would be possible to discuss a question of this kind. One is to take up the question *de novo*, and I think we are precluded from doing that, because it was discussed before, and as a result of that discussion it has been embodied in two compacts which now have force in this country, the Confederation compact and the Manitoba compact. Or we could take it up as a question which has come to us under a constitution which is binding, but in which constitution this is an unwise provision. If we look upon it in that light, it seems to me that we ought not to deprive a minority of its rights under that constitution, which is binding, because we think one of its provisions is unwise; but we should go to the constitution itself, and discuss and settle the question as to whether it is better, in the light of thirty years experience

that has been shed upon it, that the constitution should be revised. The third point of view, and which seems to me to be the only practical point of view, is to discuss it in the light of a clause in the constitution which is binding, and which, taking all the circumstances of this country into account, is not only binding, but is a wise provision of the constitution as well."

Well, we shall take the "constitution," for which Mr. Foster professes such veneration, and shall endeavor to ascertain what the duty of Mr. Foster was, in view of its provisions.

Mr. Foster says: "There is a compact in the 'Constitution of Confederation'; there is a second compact in the 'Constitution of Manitoba.'" The first of these statements is true in a limited sense; the second is not true in any sense. Mr. Foster goes on: "It is an idea which has gained currency in the country, that for these compact clauses in the constitution, and for the protection of minority schools in this country the Catholics were sole movers, and are responsible for their introduction into this constitution." He proceeds to explain that on the contrary these compacts and the separate schools were the result of the fears and jealousies of the Protestants of Quebec. Now, it will be interesting to go back and ascertain how the separate school system originated.

Origin of the Separate School System in Canada.

In the old colony of Lower Canada (Quebec), education was entirely in the hands of the Roman Catholic clergy, who collected their educational dues as well as their tithes, under the authority of the law. No other state-supported or state-recognized system of schools existed in Quebec. Public education in that colony was as exclusively sectarian as in Spain. In 1840 the colony of Lower Canada was united to that of Upper Canada (Ontario), by the Union Act of that year. For years after this union the non-Catholics of Quebec had agitated for educational freedom without success. They finally succeeded in establishing and obtaining recognition for a system of separate or dissentient schools. The restrictions and limitations under which this separate system was placed rendered the privilege one of very doubtful value. In 1863 the freedom extended to these schools was greatly enlarged. The reason for this was that, in that year the parliament of United Canada enacted the Separate School Act, for Upper Canada, which extended to Roman Catholics in Upper Canada the right to state-aided separate schools. It is a well known fact that this Act, which was the origin of the Ontario separate school system, was forced upon Upper Canada by the preponderating votes and influence of the Catholic members from French or Lower Canada. Upper Canada would never have permitted the recognition of the dangerous and baneful separate school principle, but for the fact that she was powerless to prevent it.

No Parallel Between the Position of the Quebec and the Manitoba Minorities.

It has been said that if the Catholics of Upper Canada had been granted special recognition, the "Protestants" of Lower Canada would never have been allowed to continue their so-called separate schools. But this is an entirely erroneous conception. There is no parallel or similarity, as we shall see, between the grounds on which dissentient schools may be demanded by the Protestants of Quebec, and those upon which separate schools are claimed on behalf of the Roman Catholics of Ontario.

It may now begin to strike the reader, that the great radical fallacy, which has run through, and influenced all the controversies on this subject had its origin in this legislation of 1863. It originated through the confusion and misapplication of terms, and the acceptance of false postulates. We have heard a great deal about the Catholic and "Protestant" minorities. Now it is to be observed that the majority of the population of Quebec was and is Roman Catholic. That is to say the majority is in educational matters a sectarian body. For a long time this sectarian majority compelled the "Protestant" minority, to contribute to schools controlled by their clergy, and in which their catechism and dogmas formed a considerable portion of the curriculum. Even at the present day, the "Protestant" population of Quebec is taxed to some extent for the support of the so-called public schools, which are in reality sectarian schools of the most pronounced type. What is the "Protestant" minority in Quebec? Is it a sectarian body? Is the teaching in the so-called "Protestant separate schools" of Quebec, marked by anything of a sectarian character? Assuredly not. The "Protestant" population of Quebec comprises all the people of every religious sect and denomination, as well as those who have no religious beliefs at all, except Roman Catholics. No distinctive religious exercises are engaged in at the Quebec so-called separate schools, and these schools might be attended with as little offence to his denominational susceptibilities, by a Roman Catholic as by a Methodist, an Anglican or a Baptist.

The assumption then, that there is any equal basis of comparison between the position of Roman Catholics and that of "Protestants" is a false one. The term "Protestant" is a misleading one. It is, in these controversies, used to convey the idea of distinctiveness of creed, whereas it is really a general term embracing the people of all sects and denominations except one, the excepted denomination being thus placed in a position of favorable discrimination as compared with all others, in palpable violation of one of our cardinal theories of government.

It is very clear that the separate school system originated in the fact that the majority of the population of Quebec belonged to one religious sect. After compelling the minority for a long time to contribute to the inculcation of their peculiar religious dogmas, the majority finally accorded to the minority composed of all sects, the right to establish schools of an entirely public and unsectarian character. This sectarian Roman Catholic majority in Quebec has conceded to the non-sectarian minority, a measure of liberty to which they are entitled on the ground of natural right. It is

therefore, considered by Mr. Foster and other thinkers of his calibre, to be a quite fair and reasonable arrangement that, because the Roman Catholic majority of Quebec permit the minority in that province to enjoy rights which could not be withheld without creating a well grounded charge of persecution, Roman Catholics should in all other provinces enjoy special privileges and special recognition which are not, and cannot be, accorded to any of the numerous sects composing the rest of the population in these other provinces. The effect of this "principle of confederation" would be to give Roman Catholics, or rather the Roman Catholic hierarchy, (for they are the real beneficiaries) especial and peculiar privileges in every province of the Dominion.

It is very clear, as we have indicated, that a great deal of the error and misapprehension in this phase of the controversy, has arisen from the confusion and misapplication of terms, which have had the effect, whether from accident or design, of concealing the gross absurdity and injustice involved in the division of the population for purposes of education into Roman Catholic and "Protestant" majorities and minorities, on the assumption that these are two equal sectarian divisions of the people. This assumption is obviously a false one.

Take for example the case of the province of Manitoba. We are told, in tones of reproach, to contrast our behaviour with that of magnanimous Roman Catholic Quebec, where the sectarian majority generously allows the minority, composed of every sect and creed, to have a system of common schools, and which now compels this unsectarian minority to contribute very little to the sectarian schools of the majority. The public schools of Manitoba are strictly unsectarian. There are several sects in the province of Manitoba herded in with the "Protestant" majority which are much more numerous than the Roman Catholics. The Presbyterians for instance, are twice as numerous, and would therefore make a much more respectable "minority," so far as numbers are concerned. But could the Presbyterians claim any rights in regard to separate schools? Assuredly not. The "constitution" makes no provision for Presbyterians as a "minority," the only sect for which such a distinction is reserved by the constitution, being the Roman Catholics. The Presbyterians although a minority of the population in fact and in common sense, are not a constitutional "minority." They are only "Protestants," and must flock together with their fellow-"Protestants" the Anglicans, the Baptists, the Methodists, the Jews, the Second Adventists, the Mennonites, the Agnostics, the Sceptics, and all the other various brands of "Protestants."

Now if it is right that the Roman Catholic sect should have separate schools, the privilege could scarcely on ethical or common sense grounds be denied to any of the other sects. If this privilege should be accorded and should be taken advantage of by the people of even a few denominations, public education would be an impossibility. The whole argument for the soundness and the reasonableness of this separate school "principle," the absurd hypotheses on which it is based; the confusion and misuse of terms, and the eccentric or sophistical methods of argument adopted in defending it, are more suggestive of the extravagances of opera bouffe, than of the work of serious statesmanship. It is difficult to controvert, with the gravity becoming to so serious a question, arguments based on the

absurd premises which our coercive statesmen, in all seriousness, assume to be so sound as not to require even examination.

Roman Catholics in Manitoba have to-day the same rights and privileges as every sect or denomination of the "Protestant" majority. This is the decision of the Privy Council which says that the law offers the advantages which it provides "to all alike," and that if any person or class fails to avail themselves of these advantages, "it is not the law that is in fault." No sect or denomination of the "Protestant" minority in Quebec, enjoys the privileges reserved to itself by the sectarian Catholic majority in that province. Nor does the "Protestant" minority in Quebec enjoy the same privileges which the Roman Catholic "minority" enjoys in Manitoba under the present system.

A Voice from Quebec.

One of the ablest and most exhaustive contributions to this phase of the controversy, was an editorial article which appeared about the middle of March, 1896, in the Gleaner, a newspaper of Huntingdon, Quebec. The article was written by Mr. Robert Sellar, the editor. Mr. Sellar points out that the Quebec minority schools are not "Separate" Schools in the sense in which that term is ordinarily applied, but that those of the majority are. He shows that the Quebec minority did not owe their limited educational liberty in the earlier times, to the generosity or magnanimity of the Catholic majority, but to Lord Dalhousie, a British administrator. He shows that, so far from the Quebec minority having been dealt with in a spirit of generosity by the majority, the reverse is the case, and he further shows that at the present time the minority is harassed, and the usefulness of their school system much impaired, by the personal composition of the Board of Instruction, and the rasping regulations which the majority imposes on them. Mr. Sellar has very pronounced views as to the motives which actuate the "remedial" politicians in their apotheosis of the magnanimity of the Catholic majority of Quebec. It is a matter for regret that the full text of Mr. Sellar's article cannot be given. One or two extracts will however, be interesting. In one passage Mr. Sellar observes, "But from the talk at Ottawa, it seems it is a wonderful instance "of toleration to allow the Quebec minority to teach their children the "three R's, and slavish adulation is sounded in praise of the majority for "such a gracious condescension. We confess when we read the speech of "Sir MacKenzie Bowell in the Senate last April, and the Hon. Mr. Baker's "in the Commons last July; when we noted the expressions in Mr. Foster's "Ontario election addresses, in J. L. Hughes manifesto to the Orangemen, "in Sir Charles Tupper's speeches and this later utterance of Mr. Ives, we "have been staggered, and forced to ask if Quebec is a British Province or "a South American Republic, that non-Catholics are required to be devoutly thankful that they are permitted by the majority to give their "children the elements of education? Quebec is a British Province, and the "minority are not here by permission or tolerance of the majority. They "are here as equals among equals, and in exercising so simple a right as "teaching their children in non-sectarian schools, they thank nobody, ask "no permission and are under no obligation to the majority." Again Mr.

Sellar says: "The effrontery of the Quebec majority in claiming credit "for not compelling the minority to support Catholic schools, is only sur- "passed by their impudence in demanding, as an equivalent for such an "exhibition of tolerance on their part, that Manitoba furnish funds to "establish Catholic Separate Schools. Matters have surely come to a sore "pass when, in a British Province, the fact that non-sectarian schools are "permitted to exist, is trumpeted forth as a proof of toleration, and low "indeed have sunk our public men, when they preach the cry in order to "curry favor with those upon whom they fawn." It will be observed that Mr. Sellar is not lost in wonder, love and praise, in contemplation of the performances of the politicians. Who shall say, however, that his strictures are not well merited, and even moderate?

Mr. Sellar is indignant at the colossal absurdity and dishonesty involved in the attempt of the remedialists to establish a parallel between the case of the Quebec minority and that of the Manitoba "minority." In this connection he remarks: "To talk about the majority in Quebec "having the power to force upon the minority obnoxious text books, or to "shut the school houses, and leave none but separate schools efficient is "absurd. The right of toleration depends neither on the act of Confedera- "tion nor the Federal Government; it is the inherent right of every "British subject. To endeavour to induce parliament to pass the remedial "bill, by representing that the Quebec minority is in the same boat with "the Manitoba half-breeds, is as contrary to fact as the statement that the "privileges of the Quebec minority are those that bill professes to confer "upon the Manitoba minority."

Various Controversial Styles.

None of the advocates of the separate school system, so far as we are aware, have conducted this controversy in a spirit of perfect openness or of scientific enquiry, with a view to arriving at sound conclusions, regardless of what the effect might be on their own preconceived theories, prejudices or beliefs. Some of these advocates (a great many of them indeed) rushed into the question with an imperfect knowledge of the facts and some very crude notions as to what were the issues or principles involved. This stamp of controversialist is doubtless quite honest, but he has been an unspeakable weariness. Then there is the political party controversialist, of which Mr. Foster is a type, whose chief concern is manifestly to make the facts and merits of the question square with the exigencies of the party policy. Again, there is the forensic advocate, who cannot overcome his professional instincts in literary controversy. The ethics of the legal profession do not make it obligatory on a member of that profession arguing before the courts, to draw attention to evidence he may know to exist, but which, if cited in the case, would make the success of his clients impossible. The forensic advocate should understand that the ethics which may, for obvious reasons, be quite permissible in the courts, are most improper in the sphere of public controversy. When lawyers go into literary discussion, they should endeavor to, as far as possible, abandon the methods and style of the *nisi prius* pleader.

To the mind of the writer, the best and the most honest defence of the separate school party's claims that has yet been made, was presented by Mr. James Fisher, of Winnipeg. Mr. Fisher is a lawyer and has the distinction of being the only member of the present Manitoba legislature, representing an English constituency, who was not pledged to support the maintenance of the present school law. Mr. Fisher's contribution was in the form of a series of long letters to the press. Owing to a certain prolixity of style, to the length of his communications, and partly to the reputation for extreme exhaustiveness and elaboration, which Mr. Fisher had already achieved, his articles did not receive the attention which their merit would have warranted, and which was accorded to many inferior utterances. There is the best evidence, however, in Mr. Foster's speech that Mr. Fisher's brochure had had at least one very close student.

The Compact of Confederation.

Mr. Fisher recited, with great minuteness of detail, the circumstances connected with the "compact in the constitution of confederation," to which Mr. Foster alludes. The "Protestants" of Quebec refused their assent to confederation, till the limited educational rights which they then enjoyed, as well as certain others which were promised them, were so firmly and unmistakably secured, that they would be beyond reach of interference by the provincial legislature which should, after confederation, be paramount in matters of provincial concern. Sir Alexander Galt, the leader of the Quebec Protestants, was quite right in the stand which he then took. Doubtless, experience in Quebec had taught him that even the natural rights and liberties of a citizen of a self-governing community, are far from secure, if they are left at the mercy of a legislature in which the representation of one religious sect preponderates, and which is virtually controlled by the clergy of that sect. Referring to the additional educational freedom for the security of which Sir Alexander Galt was contending on behalf of the "Protestants," Mr. Foster says :

"There were only two ways by which these additional powers could be got : either by legislation in the Parliament of United Canada before confederation came into operation, under which state of things they would have been secured by the general clause I have just read ; or else by placing another clause in the constitution, so that when they got those rights after confederation they would have them secured to them by the dominant power of confederation, acting through the Federal Parliament. This was a question brought up, as I have said, by the Hon. Mr. Galt. And how was it settled in the end ? It was attempted to be settled by legislation in the provincial parliament which was promised in 1865, but which was not brought down ; which was brought down in 1866, but which, owing to complications which arose, was not passed ; which it was then promised by Sir George Cartier and other French leaders would be enacted by the Quebec legislature after confederation had gone into force. On the strength of that promise, evincing again the good faith which existed between parties at that time as regards promises made one to the other, on the good faith of that promise for efficient and full legislation for the Protestant minority confederation was accepted, and a clause was

placed in the constitution which should make this post-union legislation secure for all time to come. This clause which was proposed by Mr. Galt and unanimously agreed to by the other delegates reads as follows ;—

"And in any province where a system of separate or dissentient schools by law obtains, or where the local legislature may hereafter adopt a system of separate schools, an appeal shall be made to the Governor-in-Council of the general government from the acts and decisions of the local authorities which may affect the rights or privileges of the Protestant or Catholic minority in the matter of education. And the general parliament shall have power by the last resort to legislate on the subject."

It will be observed that the first sentence of Sir Alexander Galt's clause is substantially sub-section 3 of section 93, B. N. A. Act, and that the latter sentence is a suggestion of sub-section 4. It will also be remembered that sub-section 2 of that section provides for the maintenance of the separate school privileges enjoyed by the Catholics in Ontario and by the Protestants in Quebec prior to confederation. Section 3, therefore, embodies the "compact." It is quite clear, as Mr. Foster shows, that the sub-sections referring to separate schools were inserted because of the desire of the Quebec Protestants to have the security of certain rights guaranteed.

A recital of the circumstances shows that the "compact" had reference to certain especial circumstances and transactions, which concerned only the province of Quebec. How, then, does Mr Foster arrive at his conclusion that the separate schools are a "principle of confederation?" At one time he asserts that separate schools are a "principle of confederation"; then when desirous to display the magnanimity of the majority of the voters of Quebec, he shows that the separate school "compact" was not a "principle of confederation," but simply a provision expressly stipulated for by the Protestants of Quebec, not as a "principle," but for the specific purpose of meeting the peculiarities of their own case, by which they secured certain guaranties, without the assurance of which they would not accept confederation.

The concession of sectarian privileges and exemptions to the Roman Catholics of Ontario, in return for the recognition, in the case of the Protestants of Quebec, of the rights natural to, and inalienable from citizens of a free community, was a grievous error. Under the circumstances, however, it was impossible for the people of Ontario to prevent it, as, in the legislature of united Canada, in which the vicious system originated, the overwhelming votes and influence of the Quebec Catholics actually decided the matter.

The earlier history of the colonies of Lower and Upper Canada, the circumstances of confederation, and the fact that in none of the other provinces of confederation do separate schools exist to-day, show that separate schools, so far from being a "principle of confederation," were simply the result of a bargain between Upper and Lower Canada.

An Argument with a Missing Link.

The entire and glaring absence of parallel between the demands of the Roman Catholic "minorities" in the other provinces, and the claims of the

"Protestant" minority in Quebec, has always been the cause of much uneasiness to the separate school advocates, and the defenders of "remedial" legislation. Mr. Foster deals with the difficulty in the manner characteristic of the opportunist politician. He takes it for granted in the first place, that the terms "Catholic" and "Protestant" represent two sectarian divisions of the people, and that the positions of each of the bodies is identical; then he says that it is now too late to raise the question as to whether the assumption is wrong, as it was settled at confederation. His reasoning is worse than trivial. Mr. Fisher, his constitutional mentor however, seems to have felt under obligation to meet the difficulty in a more straightforward manner. Mr. Fisher says:

"I repeat that the most prominent opponents of federal intervention in the present issue would be the first to demand intervention under exactly the like circumstances for the protection of the Protestants of Quebec. And for their justification in taking these two apparently irreconcilable positions they give reasons which are not only satisfactory to themselves but are exceedingly plausible.

"I have already hinted at the distinction they draw between the case of the one minority and that of the other. The system of the majority in Manitoba, as stated by the law that creates it, is a purely non-denominational one, and for the purpose of this discussion I will concede that it is so. The system of the majority in Quebec, on the contrary, is avowedly one of Roman Catholic schools. To compel the Roman Catholics of Manitoba to submit to a system that is in no sense denominational, is one thing. To force upon the Protestant minority of Quebec a purely Roman Catholic system—to compel them to educate their children in, and to pay their taxes to, schools, that are under the control of a Roman Catholic body is altogether another thing. So argue the opponents of intervention in Manitoba, who would justify remedial legislation in the province of Quebec. To them it seems plain that the abolition of separate schools in Manitoba where the minority can send their children to an undenominational school with the protection of a conscience clause cannot be regarded as a grievance comparable with the wrong inflicted on the Protestants of Quebec, if forced to submit to a system that would be practically under Catholic control. Looking at the question from a Protestant stand-point, it seems impossible to deny that there is real distinction between the two cases, in the extent at all events of the grievance. For myself I quite concede the distinction.

"Does it follow, however, that the constitution which was created for the protection of Catholics, equally with Protestants, shall be made effective for the protection of the latter, while it shall be a dead letter in safeguarding the rights of the former? To me it seems that the conditions affecting the Protestants of Quebec, rendering their dependence upon the French Catholic legislature of the province so peculiarly irksome and alarming as to demand protection by the federal powers, are in themselves the very circumstances that demand the most faithful extension to Roman Catholics of the same protection."

Mr. Fisher perceives the absence of analogy between the cases. But he evidently has failed to fully grasp the real source of the trouble, which arises from the division, in the educational laws, of the population into two

sections, the division being based on the hypothesis that the circumstances in the case of each section are the same. The hypothesis is as we have seen a false one.

The "rights" of the Catholics, as of each other sect in the Province, are safe-guarded by the Manitoba laws of 1890. But Catholics are not accorded special recognition or privileges as a "minority," the Province of Manitoba not seeing the wisdom of arbitrarily selecting any sect or class of the community as a "minority." Such a proceeding it believes to be not only unfair but absurd. All are placed on an equal footing. The Protestant minority of Quebec would offer no objection, but would be highly gratified, if the Quebec Legislature should pass an act such as the Manitoba Law of 1890, although no sect of the Protestant minority would obtain any sectarian advantage by the passage of such an act. There is absolutely no parallel between the cases, and the reasoning in support of this contention is not only "exceedingly plausible" as Mr. Fisher admits, but it is simply unanswerable, as Mr. Fisher also tacitly admits when he says: "I quite concede the distinction." The last paragraph of the above extract, it will be observed, is quite incompatible with the preceding portion. The fact of the Constitution being "created for the protection of Catholics equally with Protestants" has no relevancy as, from Mr. Fisher's own showing, the 1890 laws of Manitoba, inflict no injustice against which the Catholics require "protection." But a most positive injustice would exist if the legislature of Quebec imposed a sectarian, clerically controlled system of schools, on the "Protestants" of that Province. Moreover the constitution, according to the best constitutional authority, (the Privy Council), has not been violated by the Manitoba laws. Mr. Fisher should read the first judgment again. It is not, as Mr. Fisher would seem to suggest, a question as to the relative degree of injustice in the two cases. In the one there is no injustice whatever. In the other the grievance would be very pronounced.

Mr. Fisher, it will be observed, here falls into the same error as his partner, Mr. Ewart. He confuses the ethical with the legal. He practically admits that, ethically considered, there is nothing objectionable in the Manitoba laws. Had there not existed legislation conferring special privileges on Catholics, Mr. Fisher would not have deemed the present law unjust. Now let this fact be clearly perceived, for there is much confusion on the point. The law is admitted, even by the advocates of separate schools to be intrinsically just, and it is only the fact that it fails to recognize, and in fact abolishes previously existing privileges, which has elicited criticism and hostility. Now if these privileges should turn out to be discriminatory and unsound in principle, no grievance in a moral sense would be involved in their removal. We have already shown, and Mr. Fisher clearly admits, that the privileges in question are at least discriminating. Mr. Fisher, however, virtually argues that whether the privileges in question be peculiar or discriminating privileges, is not the question. These privileges are conceded by law and they should be maintained. Mr. Fisher apparently forgets that the Manitoba legislature is not a judicial but a legislative body. Its business is not to interpret, but to make, repeal, and modify laws, within its juris-

diction, as the one in question was declared to be. He also suggests that as a matter of policy these statutory but unfair privileges, should be continued in order to prevent the sectarian majority in Quebec inflicting a manifest wrong and injustice on the unsectarian minority. Mr. Sellar, who lives in Quebec, has no fears on that score.

Some Misconceptions about Law.

But are the separate school claimants strong on even the legal ground?

It might be well here to remember that the laws are made for the people and not the people for the laws. This observation may seem somesomewhat trite, but in view of the extraordinary arguments and postulates advanced in this controversy, it is not uncalled for. Any law which, whether from inherent defect, unsoundness of principle, or change in the conditions to which it was enacted to apply, has ceased to be useful, or is shown to be wrong, will cease to exist as soon as the mass of the people become convinced of its unsoundness, whether its end be hastened by its specific repeal, or whether it become obsolete through simple desuetude. The principle of the legislation of the Medes and Persians is not adopted in modern political systems. This is a consideration apt to be overlooked by controversialists of the profession of Mr. Fisher, whose principal fault is that his mind is a little too forensic, to permit him to perceive that in a a controversy involving as does this one, great fundamental principles of government and politics, the people not only want to know what the law is, but they want to be assured as to whether is is right. If a law is defective, it is the duty of a statesman to procure its repeal or amendment, or at least to do all he can to that end, not merely to administer it without any regard to its wisdom or soundness. This is a consideration which our Canadian statesmen would do well to ponder over, especially that section of them which consider they are bound to coerce Manitoba in obedience to what they conceive to be the constitution. If their interpretation of the constitution were correct, their manifest duty would be, in view of all the considerations upon which we have so exhaustively dwelt, and even of the admissions which they themselves make, not to coerce Manitoba, but to take measures to have that constitution amended. For if obedience to the constitution demands the overriding of the will of a province because it has enacted legislation which is inherently just and wisely designed, the constitution is manifestly unsound and in need of amendment. This course, however, would, for reasons already pointed out, involve a loss of votes, which would render the attempt impossible unless partisan differences could be sunk by all the elements opposed to clerical privileges and clerical interference in secular politics. Our statesmen of the Ottawa administration, are apparently determined to take no chances of losing votes by adopting the policy that duty and statesmanship would dictate. But does the constitution as it stands to-day demand or justify the action of the Dominion Government in this matter? Our readers will probably conclude that it does not. While there is a grave defect in the educational section of the Canadian constitution, that defect only affects the province of Ontario, upon which the separate schools are in

express terms imposed by the British North America Act. That defect can only be removed by a constitutional amendment, a legislative operation, which for reasons most obvious, is so difficult as to be almost beyond the bounds of possibility at the present time.

The Compact of 1870.

The "Compact of Confederation" argument may now be laid aside. It has no bearing on the controversy. It does not, and never did apply to Manitoba. If the argument used by Mr. Foster were sound as to the compact, nothing further would be required in order to show that, at least according to the provisions or a defective constitution, the Catholics of Manitoba were entitled, like those of Ontario, to separate schools.

But Mr. Foster has apparently very little confidence himself in this part of his case. For he goes on to show that Manitoba was bound to maintain separate schools by a special compact, made at the time of her entry into confederation, between her representatives and those of the Canadian Dominion. If separate schools is a "principle of confederation," this second compact was quite unnecessary, as Manitoba would have been subject to the application of the general principle, unless she had been expressly exempted from its operation, which we know she was not. But it must be very plain to every reader who has followed the recital, that the argument for separate schools on the ground that such a system is a "principle of confederation," is simply buncombe of the most audacious variety. We may then concentrate our attention on the "second compact." as the real basis of the Roman Catholic claims in the present controversy. Mr. Foster goes on at great length, to describe certain transactions and negotiations which took place about the time of Manitoba's entry into confederation and which we have referred to at length in the first part of this review. Mr. Foster adopts the plan of Mr. Ewart. He quotes documents, and cites statements and opinions of various persons, but, like Mr. Ewart in his Bill of Rights fiasco, Mr. Foster says nothing, and produces nothing, which at all justifies his assertion that there was a "compact."

Our readers will, of course, recollect the circumstances connected with the Bills of Rights, and the events preceding the appointment of the delegates who presented the list of Rights at Ottawa. We stated, and no effort has since been made to contradict our statement, that the alleged Bill of Rights, number 4, which contained a clause demanding separate schools, was spurious. Indeed the evidence that this is the case, is so indubitable that even Mr. Ewart, whose courage is unquestionable, has not had, so far as the writer is aware, one word to say on the subject since the first portion of this work appeared about a year ago.

Will not recognize Bills of Rights.

Mr. Foster finds the "Bills of Rights" episode very inconvenient. He therefore proposes to blot it out of existence. He ignores it, and cannot be induced to contemplate it all. He says: "I am not discussing, nor do I "intend to discuss anything in controversy with reference to the different "bills of rights or what they contained." Certainly not. Why should a

statesman who is discussing a question not for its elucidation, but simply in order to prove what he wants to prove,—worry over the knotty and disagreeable, even if vital, phases of it? Mr. Foster proceeds: "I said a "moment ago that I was not concerned to dig into this controversy about "the bills of rights. What I am concerned to know is that these negotia- "tions took place, that they were incident to the Act, that the Act embodies "a measure of guard and a measure of security to the religious minority, "whatever it might be, in the province of Manitoba, equal to, in all respects, "and stronger in some respects, than the compact which was put into the "British North America Act of 1867, in its 93rd clause." This is Mr. Ewart's argument, expressed in slightly different phraseology, that it does not matter by what means the provisions of the Manitoba Act became incorporated. The Act is a "treaty" and the negotiations on which it is based may not now be enquired into.

Neither Mr. Ewart nor Mr. Foster has produced one tittle of evidence to show that there was anything in the nature of a compact, that the people of Manitoba had thought anything about separate schools, or had asked for them. Such evidence could not be produced, because there is no such evidence in existence. In the case of the Quebec-Ontario compact, there is the fullest historical evidence of the negotiations and transactions which led up to it. In this alleged Manitoba compact there is absolutely nothing of a tangible character to justify the assertion that it ever was made. The attempt to establish the existence of such a "compact" with the evidence produced in support of it, is nothing short of impudent.

Circumstantial Evidence of a Compact.

There is nothing in the Manitoba Act which, on the face of it, could be construed as providing for separate schools. But, says Mr. Foster, the circumstances, as in the case of Quebec, show that it was settled by the negotiations, that the first Manitoba Legislature should enact legislation which should provide for separate schools, and Sub-section 2 of Section 22 of the Manitoba Act was inserted for the purpose of perpetuating the contemplated act of the legislature. In making what he calls a "proof of sequence," Mr. Foster says that in accordance with these arrangements, "the legislature, "*as soon as it was convened*, adopted a system of schools, providing in the "completest manner for the separate schools of the minority."

Sir Donald A. Smith who, it will be remembered, was the chief of the commission sent by the Canadian Government to negotiate with the inhabitants of Red River, was elected a member of this first Manitoba Legislature. Sir Donald was also a member of the Canadian Parliament which has just expired and a supporter, though we believe an unwilling one, of the coercion policy of the government. In the discussion of the Remedial Bill, Sir Donald made a speech in which, although there is absolutely not anything of a tangible character to enforce his evident object, Sir Donald speciously creates the impression that Separate Schools were talked of and negotiated for. The speech is looked upon by Mr. Foster as a strong confirmation of his argument for the existence of a "compact of 1870." Indeed it would seem as if it had been delivered for that very purpose, for Mr. Foster publishes a synopsis of it at the end of the pamphlet

edition of his own speech. The most telling passages of Sir Donald's address are quoted *verbatim* by Mr. Foster. Describing his instructions as chief commissioner, which gave him large discretionary power, Sir Donald says that one clause of the Governor General's letter to him read as follows:

"The people may rely upon it that respect and protection will be extended to the different religious persuasions....."

With reference to his mission Sir Donald Smith said:

"However, we did meet the settlers of the Red River in convention and an explanation was made to them with regard to the intended action of Canada.

They were assured that their rights, their privileges, everything they then had would be retained to them and that justice would be done in every way."

In answer to their demand that a sum of money should be yearly appropriated for the maintenance of the schools, roads and bridges, he gave them a full assurance that this would be done.

As to the nature of their schools at that time, he says:

"I may mention, however, that at that time, the schools were voluntary or separate schools: that is, the Roman Catholics had their own schools and the Protestants had theirs and there were certain grants of money given to each. "....." It is true that not much was said about schools at that time, but it was distinctly understood by the people there, and the promise was made to those people, that they would have every privilege on joining Canada which they possessed at that time, and such promise I gave as special commissioner from Canada. That was implemented by Canada." Again he said:

"The Roman Catholics had their schools and the Protestants had their schools, and each body had a grant from the Government at that time. If they did not enter minutely and particularly into the description of the Separate Schools, it was because they thought it altogether unnecessary. Any contention about Separate Schools was never dreamt of by them."

"They found and knew they had their schools and they believed the promises made would be faithfully kept and they did not care to have anything of a more binding character in regard to them." And again he said:

"Now, while a very little, indeed, was said there about schools, the people unquestionably had them in their minds and thought they would enjoy the privilege of having their schools as before."

Sir Donald A. Smith's Version of the "Compact."

Sir Donald A. Smith's speech is a monument of artistic and studied simplicity. He says the schools were "voluntary or separate schools," doubtless intending to convey the impression that they were separate schools in the sense referred to in this controversy. The simple fact is that the clergy of the various denominations, Roman Catholic, Anglican, and Presbyterian, had organized the only schools that existed, and they were maintained by these denominations or by private subscription. Sir

Donald says "certain grants of money were given to each," doubtless intending to convey the impression that these "certain grants" were made by the state. As a matter of fact, there was no state, and no organized government then in existence in the territory. The Hudson's Bay Company, which exercised magisterial functions with the authority of the Imperial government, gave, in the way of a purely voluntary donation, out of its own funds, "certain grants" to all the schools, and each denomination was treated alike. To endeavor to put this donation, which was virtually a private subscription, in the light of a state grant is—well, hardly straight-forward.

As a matter of fact and of history however, the first judgment of the Privy Council, which goes minutely into these transactions, shows and declares that no right or privilege which any body of persons had at the time of the union, was in any way interfered with by the Manitoba law of 1890. The attempt to establish the existence of "separate" schools prior to the union is quite in keeping with the general conduct and policy of the Remedialists.

Another "Proof of Sequence" Argument.

Now, it will be seen that there is nothing at all in the foregoing extract from Sir Donald's speech to show that there was any talk or negotiation about separate schools. Sir Donald says: "If they did not "enter minutely and particularly into the description of separate schools "it was because they thought it altogether unnecessary." That was not the reason. Sir Donald endeavors to suggest the inference, although he does not make the statement, that separate schools had been discussed to some extent, but not "minutely and particularly." As a matter of fact we know that they were never discussed at all. The subjects of discussion at that time have been chronicled by other and equally reliable historians, but separate schools are not once referred to. Sir Donald further observes that "any contention about separate schools was never dreamt of by them." This is obviously quite true, because separate schools themselves had "never been dreamt of by them," as Sir Donald knows. And this is the true reason why they were not "minutely and particularly" described.

Sir Donald follows Mr. Foster's plan of building a theory or argument out of nothing, and establishing it by the new "proof of sequence" device. He supplements the above quoted observations with the following paragraph:

"This is apparent, I think, from what took place in the Legislature of Manitoba in 1871, when, I think, the school law was passed. It may not be known to a great many of the members here that many of those who composed the Legislature of Manitoba at that time were members of the convention (of forty), and in deciding that there should be those schools they were looking to what had passed in this convention with it fresh in their minds. Therefore, I certainly think, the people of the Red River, then the majority, now the minority, are entitled to all the privileges that are given to the majority of the present day. I think that in one way or the other we should insist that they should have full justice, and that whether in the form of separate schools or in any other way, still

that substantial justice should be done and that faith should be kept with these people."

Now, let us see just what did take place at the first session of the first Manitoba legislature. The first legislature of the province of Manitoba, met on March 15, 1871. On April 4 of that year the first school bill was introduced by Mr. John Sutherland, member for Kildonan. It made no provision for separate schools and no objection was taken to it on that account. It provided in fact for a national or common school system. It was ordered to be read a second time on April 12. This bill was not enacted. It seemed, however, to secure the favorable consideration of all parties in the legislature, and met with no opposition. It was withdrawn in order that a more comprehensive measure on the same lines might be introduced in its place. Such a bill was introduced by Mr. John Norquay, which also provided for a national school system, and did not provide for sectarian schools. This was on April 27, 1871, just six days before the close of the session. Up till this time there was no mention of separate schools. The first heard of a separate school scheme, was the sudden introduction on this same day (April 27, 1871,) of a bill to "establish a system of education in the province." This bill was introduced in blank by the Attorney-General of the province, Hon. M. A. Girard, at the instance of Lieutenant-Governor Archibald, who seemed to have taken an extraordinary interest in its passage. It was read a second time on Monday May 1, 1871, only one copy of the bill being before the legislature, and that in writing. "The "provisions of the bill were not explained at any length to the legislative "assembly, and it was passed through committee and all its readings, during "that afternoon. No time was allowed to the legislature to ascertain the "nature of the bill or to give it any consideration." The session of the legislature ended on May 3, 1871.

This was the act which established the separate school system in Manitoba. Thus hurriedly and with so much mystery and secrecy, at the end of a legislative session, was enacted this measure which our remedialist statesmen tell us is an indisputable evidence that the people of Red River and especially the members of the "Convention of Forty" were all along aware of the fact that there was an agreement to establish separate schools. The dates and essential facts as to the introduction of these various measures are taken from the official journals of the Manitoba legislature. The information as to the detail of the circumstances and transactions as well as the above quoted sentence, is from the affidavits of two members of that first legislature (Messrs. Hay and Sutherland) who are still alive. The affidavits throw a very sinister light upon the methods by which the passage of the bill was secured. They were made on March 27, 1896, after Sir Donald Smith had made the speech in support of Mr. Foster's "second compact" theory. They were presented to the public by Mr. Wade, a Winnipeg lawyer, in a letter to the press.

The "Sequence" Missing.

Now if the education clauses in the Manitoba Act had been expressly framed on the strength of an agreement that separate schools should be established by the legislature, how does it come about that this legislature

should go on discussing for six weeks, the subject of education without mentioning separate schools, whilst the bills under discussion entirely omitted to make provision for such schools ? What is to be thought of the historical reliability of a controversialist like Mr. Foster who asserts that "the legislature *as soon as it was convened*, adopted a system of "schools providing in the completest manner for the separate schools of "the minority." Sir Donald Smith asserts that many of those who com- "posed the legislature of Manitoba at that time were members of this "convention (of forty), and in deciding that there should be those schools "they were looking to what had passed with it fresh in their minds." How does the worthy knight account for the fact that these members sat discussing common school systems for six weeks, without even hinting at any agreement to provide separate schools ? The explanation is simple. The convention had never decided "that there should be those schools." There is absolutely no record of any such decision, although the doings of the convention have been recorded, and Sir Donald himself, although a public man, although he was intimately familiar with the events of that time, and although this controversy has lasted six years, mentions these mythical agreements for the first time only a few weeks ago. The convention never discussed the question at all.

But why go on ? It must already be apparent to the most superficial reader that the "history" of the remedialists is as unreliable as their arguments are sophistical. The "second compact" theory is just as strong and sound as the "principle of confederation" theory. When we remember the circumstances connected with the origin of the "second compact" notion, we must admit that it is most appropriate, and indeed inevitable that the present attempts to establish its existence should be characterized by distortion and misstatement of fact, as well as by evasion and insincerity in argument.

Irrevocable Legislation Incompatible with Popular Government.

But assuming that this "compact" had been a fact instead of a myth, we would then be brought face to face with a very wide problem, and one involving the most fundamental considerations. This compact is not only assumed to have actually been made, but it is further assumed and declared to be irrevocable. This is obviously a very serious consideration. The consideration here raised touches the very foundation stone of the whole system of popular government. If the people govern themselves they have manifestly the right to make and unmake the laws under which government shall be administered. Without such right popular government is a delusion. As a matter of fact the right exists, and its only limitations are the will, the conscience, and the intelligence of the people themselves, or the superior compulsory force of some external power. The enactments or stipulations of past generations have no binding force on the succeeding inhabitants of a political jurisdiction, beyond what appeals to their conscience and intelligence.

Let us review the facts in the present case. A population of 12,000 persons passed laws relating to education twenty-five years ago. These

laws, we shall assume, suited these people and their peculiar conditions. It was subsequently seen however, that, by distinguishing the persons of a certain religious sect from all other persons or classes in the community, and by conferring, on the assumption that this division was fair and equal, peculiar privileges on the persons belonging to that sect, these laws violated the principles of equality on which our government is founded, and that this violation of principle would create great and increasing difficulty and expense in the administration of government, particularly with reference to education. The population, in the meantime, had greatly increased both in numbers and intelligence, and its material conditions had entirely changed. The people replaced the archaic and unsuitable laws with legislation more adapted to their needs and their intelligence, while having strict regard to the rights of every class in the community. But our statesmen tell us that this legislation must be revoked, that the legislation of the 12,000 original inhabitants must be perpetuated no matter how unsuited to present conditions, how wrong in principle, or how crude in conception. And this, not because the privileges of the privileged denomination can be defended on their merits, but simply because they were once given, and given under circumstances which brought them within the scope of the mythical "constitutional compact," by virtue of which they are irrevocable. This is a very startling doctrine to propound in a government like ours.

The proposition involved in the contentions of the remedialists, that a handful, or any number, of persons inhabiting a territory may make discriminative laws which shall bind all future generations inhabiting that territory, is absurd. The settlers had full right to demand security and protection in the enjoyment of their liberties and their properties. But they had no right, nor did they claim any right, to legislate for future generations in education or in any other matter. The failure to perceive the distinction between individual rights and liberties on the one hand, and class privileges on the other, has been another source of much confusion. To guarantee the settlers of Red River secure enjoyment of their rights and properties is one thing. To give them the right to say that people of any religious denomination whether Catholic or non-Catholic should enjoy special privileges or exemptions in this territory in all future generations, merely because they happened to belong to this denomination, is quite another, and quite an impossible thing.

The Province of Manitoba "the People" in this Case.

As the Privy Council pointed out, in its first judgment, the government and legislature of the province cannot properly discharge their duties in regard to education in the absence of complete autonomy, limited only by the obligation to observe and respect the rights and customs which any persons had at the union, and which it so happened, were the natural and inalienable rights of British subjects. These have been fully respected in the Manitoba legislation. Now it may be said that, while the proposition that the people of a democracy have always the right and power to make or abrogate the laws under which they are governed, is incontrovertible, it has no relevancy to the discussion. It may be said that Manitoba in this instance is not "the people" but only a section of it, and that the political

unit in the case is not the people of Manitoba, but the people of Canada. We have just referred to the explanation in the first judgment of the Privy Council of the considerations which prompted their conclusion that, subject to the protection of the natural liberties and rights of all citizens, full autonomy in the matter of education was necessary to an efficient discharge of its educational responsibilities by the government or legislature. That judgment affirmed the constitutionality of the legislation, that is, it declared it to be within the lawful power of the legislature to enact, and declared also that the law was in itself wise and just. It will also be remembered that in their second judgment their Lordships expressed their opinion that sub-section 2 of section 22, Manitoba Act, on which the appeal was based, and which they were asked to interpret, was an anomalous provision. The provision for an appeal from a legislative to an executive authority was what struck them as "anomalous." Now although by virtue of the "anomalous" sub-section in question, the parliament of Canada has the very "anomalous" constitutional right to interfere with legislation which is constitutional, it would obviously be an act of tyranny for that parliament to nullify the legislation merely because it has the technical power of interference, and without regard to the intrinsic soundness or justice of the legislation in question. The constitution, as we have shown, protects all classes in Manitoba in their natural and inalienable rights. Manitoba has acted within the constitution. It is therefore the duty of parliament to refuse to arbitrarily exercise its technical authority and to leave to Manitoba its required and rightful autonomy. Manitoba is morally therefore "the people" in the case.

The Constitutional Duty of the Government.

We must bear in mind that the Dominion Government was acting in this appeal in the capacity of statesmen with the widest discretion. If they had found that the position of Manitoba was sound, but that it was in conflict with some provision of the Constitution, their manifest duty in such circumstances was to bring before Parliament a proposition for the amendment of the Constitution. It may, of course, be argued, that this would be a hopeless undertaking in the present political conditions of Canada, and that the attempt would mean sure defeat and loss of power to the government and party which made it. But does it in any way lessen the obligation of a body of public men to do their duty, that their attempt to fulfil it will cost them place and power? Or does the fact that following the path of duty means loss of place and power, justify a statesman in pursuing the exactly opposite course, in order to retain them? They cannot make the constitution square with legislation that is sound and right, so they will mutilate or annul this legislation to make it fit the constitution! What is the constitution? To listen to the remedialists and some other "constitutional" statesmen, it might be thought that it was an unalterable code, evolved by some superhuman agency for our guidance, and which demanded our unquestioning and unenquiring obedience. Constitutional acts, like all other legislative enactments, are subject to amendment or change, when this should seem desirable. But in this case the question of the constitution does not come up. For the laws, as

we have seen, have been declared to be strictly constitutional by the tribunal of last resort.

Rights to Appeal and Rights to Have Privileges Restored Not Synonymous.

Does the obligation to hear the petition involve the further obligation to grant what is asked? Manifestly not. Such a situation would be absurd. But this point has been set at rest by the Privy Council, who have explicitly stated that the discretion of the Governor-General-in-Council is unlimited in dealing with the appeal. But the Dominion Government says that, while it is quite true that it has full discretion, yet the fact that the Privy Council has referred to the existence of a grievance, indicates a moral obligation on the part of the Dominion Government as the appellate body, to see that a remedy is found. Now this point has been already dealt with. The fact that the Privy Council had referred to a grievance, did not impose on the Dominion Government, any obligation, moral or legal, to do anything whatever, nor did it relieve the Dominion Government from the obligation to ascertain for itself whether any grievance existed. For, be it remembered, the question before the Privy Council was not whether there was a grievance, but whether there was an appeal to the Governor-General-in-Council. This appeal, as it was quite evident from their Lordships' judgment, might lie whether there was a grievance or not. Their Lordships, in the second judgment, said nothing which tended to demonstrate the existence of a "grievance" in the moral sense. But in their first judgment they show very conclusively that no grievance exists. As we have seen, they say: "But what right "or privilege is violated or prejudicially affected by the law? It is not "the law that is in fault, etc." Now why should the Dominion Government base its whole attitude and action in this mater on a chance expression in the judgment, which obviously could not have been used in the sense in which they interpret it? Even if their Lordships had stated in express terms, that the petitioners were laboring under a grievance (which they did not do), there would have been no obligation imposed upon the government to do anything. For it was not the business of the Privy Council to say whether there was a grievance or not. Even the Privy Council cannot go into questions outside of those before it for adjudication. No comment that the Privy Council could make, favorable or hostile to the case of the petitioners, could relieve the Dominion Government of the duty of going into the whole facts of the case, as if they had never previously been dealt with. For it is to be remembered that as the question before their Lordships in the second appeal was not as to whether there was a grievance, no evidence or argument for or against the contention that a grievance existed, could be, or was, introduced. When in the first case such evidence was submitted their Lordships said there was not any grievance. If any further trial or enquiry is desired as to the actual existence of a grievance, Manitoba is ready to become a party to it, to submit its evidence, and to abide by the result. Its government has so declared.

Is the Government Obeying the Constitution?

But has the Dominion government risen to the duty demanded of it? Has it assumed its responsibility as a political tribunal, or has it exercised its unlimited discretion to deal with the matter, having regard to the actual facts of the case, and to sound principles of government? Let us see. Here is an extract from the election manifesto of Sir Charles Tupper, in which he outlines the attitude and arguments of the government:

"It is unnecessary that I should attempt within the scope of a paragraph to fully review the position of the government in relation to the Manitoba schoool question. Although shamefully misrepresented by men who have had a purpose to serve in doing so, or who have been misled by mis-apprehension of the real merits of the question, the fact is recognized that the government has taken a clear and definite stand on the constitutional aspect of the matter. We have simply done what we believed to be right in taking up the duty laid at our door by the judgment of the highest court in the realm, and in endeavoring to redress the grievances of the Roman Catholic minority in Manitoba by restoring the rights and privileges guaranteed to them by the constitution. Knowing our case rests upon a sound constitutional basis, and feeling we are doing right, it is our patriotic duty to adhere to the policy we have adopted in this regard and we now appeal for a vindication to the sober sense and the justice of the Canadian people."

A very cursory study of this paragraph will enable the reader to see that it is absolutely without meaning in so far as it may have been intended to explain the considerations which determined the coercion policy of the government. It is composed entirely of specious platitude and irrelevant verbiage. What can be the possible meaning of the assertion that "the government has taken a clear and definite stand on the constitu-" tional aspect of the question?" We venture to assert that, although the phrase may have an imposing jingle in the ear of the uncritical listener, Sir Charles would be quite unable to explain what it means. It is simply magniloquent nonsense. So also is the proposition "our case rests upon a " sound constitutional basis." When we know the "constitutional aspect of " the question" after a careful study of the duty which the constitution really imposes on the government, how absurd and tawdry do such utterances appear.

Sir Charles rightly says that the position of the government has been " shamefully misrepresented by men who have had a purpose to serve." The men who have "shamefully misrepresented" the motives of the government have been its own members. And the shameful misrepresentation consists in their attempts to create the impression that their present course is taken in obedience to the calls of "patriotic duty."

Sir Charles says the Government has taken up "the duty laid at our door by the judgment of the highest court in the realm." It has not done so. It has evaded that duty. It has assumed that the Separate School system was instituted by the constitution and that, therefore, whether it is a good system or a vicious system, it must be maintained. This is an absurd position for statesmen to take. Neither the constitution nor the

"judgment of the highest court in the realm" imposed upon the Dominion Government the obligation to take any fixed or particular course whatever. In its capacity as court of appeal, the Dominion Government was invested with the fullest discretion as pointed out by the Privy Council, and as admitted by the counsel of the Roman Catholics themselves. All that the constitution, as interpreted by the judgment, obliges the Government to do, is to hear the appeal. If they ascertained that, under the law of 1890, the rights to which Cotholics, equally with people of all other sects, are entitled, were protected by the Manitoba legislation, then they were bound, in order to properly fulfil the duty imposed on them by the constitution, to refuse to interfere with that legislation.

The Government's Course a Violation of the Constitution.

The contention of the Government that it is bound, in obedience to the constitution or to the judgment of the Privy Council, to take certain action, regardless of the desirability or undesirability of Separate Schools, is preposterous. If the constitution created the government a court of appeal, and in that capacity invested it with discretionary powers, the constitution obviously contemplated that the discretion should be exercised. A failure to exercise the discretion, therefore, instead of being obedience to the constitution, is disregard of its provisions. The Government, (or Sir Charles Tupper) says that it proposes to "redress the grievances of the Roman Catholic minor-"ity in Manitoba by restoring the rights and privileges guaranteed to "them by the constitution." This implies that some rights and privileges so guaranteed have been taken away. Now if the Manitoba legislation had taken away any rights and privileges guaranteed by the Constitution, it would have been unconstitutional legislation and therefore inoperative and of no effect, till the constitution had been amended. But the Privy Council, in its first judgment, decided that the law had not taken away any rights and privileges guaranteed by the constitution, and that it was therefore *intra vires* of the legislature and constitutional. Sir Charles evidently has overlooked altogether the first judgment, which is incomparably the more important of the two. Because the question then before their Lordships, was this very question of the constitutionality of the Manitoba legislation. In the second, the question before their Lordships, was the comparatively unimportant one as to whether there was a *prima facie* case for an appeal to the Governor-General in Council, under a provision of the Manitoba Act which their Lordships in giving judgment, pronounced to be an anomalous provision.

Statesmanship from the Opera Bouffe.

But the whole fabric of this elaborate network of jumbled sophistication, which the government presents as an argument in defence of its course—the "compact of confederation," the "principle of confederation," the "obedience to the constitution," and "the judgment of the highest court in the realm," and all the rest of it—is so flimsy, so incoherent, so utterly incapable of resisting the puncture of criticism at any point, that it is impossible to believe that men with even sufficient cerebral power to

enable them to obtain positions of leadership in the Conservative party of Canada [and we have had powerful demonstration that a wonderfully small modicum suffices] can fail to be alive to the fact that the whole performance is a colossal piece of "buncombe." We trust that our readers will pardon us for again using a figure, whose introduction into a discussion of such a subject as this, may seem somewhat of an incongruity, but when the writer reflects on the essence and the accessories of this controversy, the only parallel which presents itself to his mind are the extravagances, the paradoxes, and the impossible situations of the *opera bouffe*. The elaborate and solemn disputations over self-evident facts, and the equally solemn and equally ridiculous acceptance of hypotheses whose absurdity is borne on their face, give the performance a truly Gilbertian flavour.

Is Duty the Motive?

The effort to enact "remedial" legislation is one of the most startling performances attempted by a responsible body of politicians in any democratically governed state of modern times. The outrageous character of the effort has not yet been fully realized. Here is a group of statesmen prepared, on the strength of arguments whose flimsiness and insincerity are so palpable as to at once indicate that they have been manufactured to meet a desperate exigency, to commit the Confederation of Canada to the assertion of the most preposterous principles, to set down the most vicious precedents, and to directly override and antagonize the will of one of the most intelligent divisions of its population. And what is the motive? The government says that the actuating motives are simply duty and patriotism. But who, that has studied this question, that knows the facts, that has considered the arguments advanced by the government in support of its course, and that knows what the government has to gain, and obviously expects to gain, by pursuing that course, can be induced to believe that its motives are other than the most sordid and most unprincipled? When we see it asserted that this dangerous, costly and sordid policy, has been adopted at the call of duty, in the interest of the country, and in defence of its reputation for good faith, the performance is only rendered a little more revolting. Hypocrisy is probably the most repulsive of all the vices.

It is with much reluctance and only after great deliberation that we put the matter thus plainly. But after an analysis of the situation only two alternatives present themselves to our minds. Either the government is incapable of grasping and dealing with the question, or it has determined to manipulate it regardless of right or wrong, or of the country's wellbeing, solely with the view of securing the support of the Roman Catholic episcopacy which it knows or believes controls the Catholic vote which, on most questions in which the heirarchy are interested is considered to be "solid," whilst the Protestant population being under no ecclesiastical domination are more apt to vote according to partisan affinities.

The Question Before the People.

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The Church in the Campaign.

The question is now before the Canadian people, and as it affects the interests of the Roman Catholic clergy, they will make sure that it shall be the leading issue in the elections of June 23rd, which on account of the existence of conditions already described they are able to do. The campaign is now on and the spectacle is far from being attractive. Such occasions display in unpleasant relief the great necessity for a much higher standard of public intelligence and public honesty, and of individual sense of public duty than at present exists, and consequently the urgent necessity for an effective public educational system. The tendency to allow the exigencies of party to overshadow the interests of the country is still deplorably prevalent, although there are those who believe they detect a growing distrust and independence of partisan machine influence, especially amongst the younger men. This they attribute to the superior intelligence of these younger men, which again is due to the better opportunities which they have had, on account of the existence of more or less efficient systems of public education. Thousands of men vote from all sorts of motives, such as personal interest or animosity, social relationships and above all partisan connections, without giving the slightest weight to the considerations which should really determine their votes. And these are not by any means the worst class of voters. Then there are the electors who vote as members of a religious denomination, and not as citizens, and who, however worthy they may be in their personal capacity, are probably the most dangerous of all the undesirable classes of electors. In this connection, and as suggesting and illustrating the nature of the danger, it might be well to consider the following paragraph from a *mandement* issued by the Catholic Bishops of Quebec, to the Catholic electors: "Please remark, our dearly beloved brethren, that a Catholic is not permitted, let him be a journalist, elector, candidate, or member, to have two lines of conduct in a religious point of view, one for private life and one for public life, and to trample under feet in the exercise of his duties not social, the obligations imposed on him by his title of a submissive son of the church. Therefore, all Catholics should only vote for the candidates who will formally and solemnly engage themselves to vote in parliament in favor of legislation giving the Catholics of Manitoba the school laws which were recognized to them by the Privy Council of England. This grave duty imposes itself on all good Catholics, and you would not be justifiable, neither before your spiritual guides, nor before God Himself, to set aside this obligation."

If free government can exist in a community in which such a manifesto as this, is permitted by a large body of citizens to influence them in

the discharge of their political duties, then the writer is compelled to admit that his notions of what free government is are sadly aglee.

The peremptory attitude and the violence of the language of some of the prelates during this controversy, have been a significant feature of it. A Nova Scotia bishop characterized as "hell inspired hypocrites" those Catholics who opposed remedial legislation. An aged missionary priest wrote to the Hon. Wilfrid Laurier, requesting his assistance and co-operation in the passage of remedial legislation. The following paragraph from Father Lacombe's letter, describes the consequences of Mr. Laurier's refusal to comply with the request:

"If—which may God not grant—you do not believe it be your duty to accede to our just demand, and that the Government which is anxious to give us the promised law be beaten and overthrown, while keeping firm to the end of the struggle, I inform you with regret that the episcopacy, like one man, united to the clergy, will rise to support those who may have fallen to defend us. Please pardon my frankness which leads me to speak thus."

The frankness is certainly charming. These and many other such expressions may afford a vivid insight into the nature of this dispute.

The Feeling in Manitoba.

There is no doubt that there exists a feeling of soreness on the part of a considerable section of the Roman Catholics in Manitoba. In the first place, they have lost a privilege which they valued highly. Whether their preference for Separate Schools originates from the exercise of their own judgment, or is dictated by the influence and demands of the clergy, is a matter into which it is not necessary to enter. There is no doubt about the existence of at least an avowed preference on the part of a large majority of the Catholics for Separate Schools. It is scarcely reasonable to expect that they would acquiesce in a spirit of joyfulness, in the changes which put an end to their peculiar privileges. Unfortunately human nature whether Roman Catholic or "Protestant," has not yet reached that phase of development on its moral side, which would be necessary before any considerable class of mankind would be prepared to cheerfully surrender advantages which it possesses, no matter how clear may be the demonstration that its possession of these advantages is a very onesided and unfair arrangement. But what is to be said in argument, with a body of citizens who contend that by virtue of the incomparable superiority of their religious creed over that of all others, they are entitled to exclusive treatment? For that is the meaning of their claim in the last analysis. And what can be said to these same people, who consider as an evidence of bigotry and fanaticism, the passage of a law by which they are placed on the same plane, and enjoy the same advantages as every other section in the community? Argument on any matter is useless and indeed impossible, with men who, in regard to that matter, have placed their judgment and their conscience in the keeping of others.

This is, however, a case for the exercise of forbearance and moderation on both sides in the conduct of the controversy. When the Roman Catholics have time to examine the whole question free from the heat of

discussion, they will see the real meaning of the attitude of the Province. When they realize that this action has not been taken at the instigation of fanatical rage, or because of an ignorant dislike of their religious beliefs, they will, we believe, in increasing numbers, avail themselves of "the advantages which the law offers to all alike," and the value of which advantages some of them now realize and avail themselves of.

The Campaign.

To a disinterested spectator the contemplation of the present political struggle would be productive of much amusement, if the graver and more sombre aspects of it could be kept out of view. The transparent insincerities, the bombastic and grandiloquent expositions of policies, calculated more to befog than to enlighten; the exploitation of "loyalty," and the general impression of sham and unreality which pervades the whole business, again suggests the comedy stage or the circus. A very disagreeable feature is the adherence to the time honored custom of bribery of constituencies by the offer or promise of public works.

As soon as the campaign commenced, it became evident that it was the settled plan of the government to regain the constituency of Winnipeg. The reasons for this desire are very apparent. In the first place it was thought that if Winnipeg, which is recognized as the centre of the resistance to coercion or remedial legislation, could by hook or crook be induced to return a supporter and a member of a government pledged to coercion, the passage of the remedial bill which the government has promised the hierarchy, shall be passed if it is returned to power, would be a much easier matter than it is otherwise likely to be. The government could then say to its rebellious followers in the east: "Why should you object to remedial legislation "when Manitoba itself, as shown by the result of the Winnipeg election, "is really quite indifferent on the subject?"

Again, Winnipeg has been represented for about three years by Mr. Joseph Martin the author of the school laws of 1890, and he proved himself to be such a wide awake, formidable and untiring critic, that he had become exceedingly inconvenient and obnoxious to the government. He vigilantly watched and strenuously resisted, all attempts to poach on the people's patrimony or to exploit the public exchequer. Of course he was in the first rank of the resistance to the scandalous attempt to pass the remedial bill. For these and other like causes he is held in great disfavor by the government and its supporters. The vacuous old gentleman who by some strange freak of fortune, possible only in the sphere of "politics," attained the position of Premier of Canada, and held it till his subordinates ungratefully and harshly jostled him out of it, has referred to Mr. Martin with remarkable originality of diction as a "dangerous demagogue," which epithet applies to Mr. Martin with as much appropriateness as it would to the moon. Sir Charles Tupper has alluded to him as "Martin of Winnipeg, "mainly instrumental in perpetrating the outrage on the Catholic minority "in Manitoba." (Sir Charles was speaking in Montreal. His characterisation of the Manitoba school laws is interesting.)

Inspired by this double motive the government has spared and is sparing, no effort to carry Winnipeg. Mr. Hugh John Macdonald, son of

the late Sir John A. Macdonald, who formerly represented Winnipeg in the Canadian parliament and retired from the position in disgust with "politics", was induced to enter the cabinet pledged to coercion, and to again contest the Winnipeg constituency, where, it was calculated, the prestige of his name and his personal popularity, would have a powerful influence. Other means have not been by any means neglected. Sir Charles Tupper accompanied Hon. Mr. Macdonald on his return to Winnipeg after his acceptance of office, and there made the opening speech of the campaign. Exaggerated accounts of the reception accorded to Sir Charles in Winnipeg have been telegraphed all over the country, and Sir Charles himself has stated that he found that the feeling of the people of Winnipeg had been much misrepresented; that they were not so averse to remedial legislation as was supposed! The party reins are being drawn hard, and the party whip is being cracked, but nevertheless party lines are being obliterated on a scale never before known in this community. The coercion policy may thus prove to be not an unmixed evil. Sir Charles in his speech promised everything in the way of public works, which the people of Winnipeg and of Manitoba have been clamouring vainly for during the past fifteen years. The perennial Hudson's Bay Railway, which exists only on the statute books and which has for fourteen years been a tool of "promoters" and charter-mongers, and a stalking horse of the politicians at election times, is now to be built,—no mistake this time. The vicious provision in the Dominion election laws, which extends the franchise to non-resident property owners, offers large scope for enterprising persons who are ambitious to determine what the "will of the people" shall be. There are indications that the opportunities which it affords will not be neglected. The spectacle on the whole is more unpleasant than amusing. It is very safe to predict, however, that no influences that can be brought to bear, legitimate or corrupt, open or occult, will be strong enough to carry the seat for Mr. Macdonald.

A Specimen Remedialist Record.

As Winnipeg is to be the battle centre, it may be interesting to study the attitude and the record on the school question of the gentleman who is now asking the votes of the electors in his capacity of member of the coercionist government. As an illustration of the shifts to which the remedial statesmen are put, the record of the Hon. Hugh John Macdonald is interesting and instructive. Besides the prestige of his father's name, Mr. Macdonald has some personal claims to attention. He is a man of pleasant address, of great geniality, and his instincts and impulses are, we believe, those of a natural gentleman. He cannot be compared, and in fact is not in the same class with his opponent in the matter of force of character, executive capacity, or even in the minor qualifications of public speaking. This is not at all to Mr. Macdonald's discredit, for there are few men in the Canadian parliament who can rank with Mr. Martin in the matters of force, ability or debating power. Mr. Macdonald is himself a man of some ability, and he is a fluent, if not very profound speaker.

When Mr. Macdonald represented Winnipeg in the Canadian parliament he was a strong believer in national schools and was strongly opposed

they have suffered any injury, because that was not their business. It will be observed that Mr. Macdonald's references to the judgment are of that vague and incoherent sort so characteristic of the "remedial" statesmen when endeavoring to extract a justification for their policy from this decision.

However, Mr. Macdonald's exposition of his change of attitude hardly calls for much comment. It speaks for itself and it speaks so plainly and so suggestively that a mind of very limited powers of analysis can see what it means. It means that Mr. Macdonald sees that his present position is inexplicable and indefensible and he endeavors to cover up the defects and missing links in the sequence of his "explanation" with a mass of confused verbiage. It is regrettable that a man of amiable qualities and good impulses, such as Hon. Mr. Macdonald undoubtedly is, should allow himself to be placed in a position so humiliating as that which he occupies. It is a pointed illustration of the debasing tendency of the insane and sordid partisanship which obtains in this Canada of ours, and which has introduced a set of ethical standards into Canadian public life so low, that the citizen who adopted them in his private commercial transactions, would be commercially ostracised, if even more inconvenient results did not ensue.

Mr. Macdonald says he was not aware that the minority "had the "right to appeal on the question of fact as well as of law." If this has any meaning at all it must be apparent only to Mr. Macdonald. The appeal or reference in the last case involved no question of fact unless Mr. Macdonald considers as a question of fact the question as to whether rights or privileges had been in fact affected. That was not a "question" at all. It was known beyond all question, not only that they had been affected but that they had been abolished, and properly so. Mr. Macdonald knew this long before the reference was made, just as thoroughly as he can know it now. What then is the meaning of his phrase about questions of fact as well as of law?

Conclusion.

In these pages we have endeavored to set before the readers the facts and to indicate the issues involved in this important controversy. On the title page of this review we point out that the controversy is one involving questions of ethics, politics, facts and law. The title itself is in the form of an interrogatory as to the soundness of Manitoba's position. The answer we will leave to the reader. For ourselves we have all along been thoroughly impressed with the impregnability of Manitoba's position in regard to all the aspects of the question. We believe that the people of Manitoba clearly understand the issues, that they believe they are right, and consequently that they will maintain their attitude to the end as firmly as they have hitherto, and that they will prevail.

Although the overwhelming mass of the people here are of one mind on this question, they are not unaminous. The great majority of the

Roman Catholic population is certainly for separate schools, and, for the reasons already adverted to, we are not disposed to condemn them or to speak harshly of their attitude.

But there is also a proportion (fortunately for the reputation of the province a very small one) of the non-Catholic population, which is ready to support the policy of coercion or any other policy which the party leaders might decide upon. This body uses the ordinary party shibboleths. It prattles about the "constitution", the "rights of a weak minority", the "grievance which the Privy Council found to exist" and so forth, as the pretext for its subversion of principle, and its treachery to the interests and the rights of the province.

Probably, however, the most exasperating of all the varieties of remedialists is that small group who declare their opposition to coercion and their belief that it is tyrannical, but who urge that Manitoba should compromise, should "do something," because the agitation is, according to them, having a disastrous effect on our material interests. These persons assume the possession by themselves of an abnormal wisdom and sagacity. They affect to believe that this question is kept alive only by the manipulations of unprincipled politicians, and the misdirected enthusiasm of a few zealots and doctrinaires. Their intellectual status and the point of view from which they regard this question may be gauged from their observations. They ask, "has the school question made you rich?" No, it has not made us rich. But we would be poor indeed, in all the qualities that have been hitherto deemed the most admirable whether in individual men or in nations, if we should submit to the deprivation of what we believe to be our rights, and should permit the assertion of false principles of government, and the establishment of vicious precedents in this new and vast domain, merely because the discharge of our duty to ourselves and our successors was not making us rich.

What would have been our condition to-day if the men to whose struggles, whose courage, and whose invincible determination to adhere to the path of duty as they saw it, we owe the freedom of which we are, in our cheap ebullitions of "loyalty" so much given to boast, what would have been our condition, we say, and where would have been those liberties, if these staunch men had calculated, before launching into the struggle, whether it was likely to result in making them rich? There is in every community a class of cheap cynics who consider as an evidence of superior intellectual acumen, their sneering disbelief in the existence of any motive higher than self-interest. Such men have an evil influence. They often are the means of repressing, from the fear of ridicule, the natural expression of right feeling on the part of honest and right-minded men, who are somewhat lacking in force of character. But these shallow cynics are we believe comparatively few in number. We are a commercial and a Boetian community, but we have confidence that there are still in the natures of the great mass of this people, those chords which will respond clearly and unmistakably when touched by a strong appeal to that sense of duty, which surely cannot yet be dead in the hearts of the heirs and descendants of the race which above all others has successfully fought the battle of human progress and human freedom.